

2023



TEN THOUSAND COMMANDMENTS

*[An Annual Snapshot of the
Federal Regulatory State]*

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Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2023 Edition

by Clyde Wayne Crews Jr.

Executive Summary

I don't want to hear any more of these lies about reckless spending. We're changing people's lives!

—Joe Biden at the 29th AFL-CIO
Quadrennial Constitutional
Convention, June 14, 2022

The cost of government extends well beyond what Washington taxes. Federal regulations add another \$1.939 trillion to Americans' annual burden. Federal environmental, safety and health, social, and economic interventions grip the economy. Many crisis regulations become permanent regulations, or last far longer than is warranted. The COVID-19 episode was the third major economic shock of the century, after the September 11, 2001, attacks and the 2008 financial crisis.

There have been no large-scale tax hikes, but the hidden tax of regulation has proved appealing to lawmakers. Unlike on-budget spending, many regulations are hard to quantify. Budgetary pressures can incentiv-

ize off-budget regulations requiring private outlays and adjustments rather than adding more unpopular deficit spending.¹ Mandates like family leave, child care, and job training initiatives could involve either increased observable government spending or new regulations on business. Just as consumers wind up shouldering much of the corporate income tax,² the regulatory compliance costs and mandates borne by businesses will percolate throughout the economy, sneaking their way into consumer prices.

When the U.S. federal administrative state began its march over a century ago, few imagined the tangle of hundreds of thousands of rules and guidance documents it would produce, and the way those would envelop society. Donald Trump's four years brought unique reversals, such as a reduced flow of new rules and some rollbacks of existing ones. Attempts were made to streamline internal departmental and agency processes and speed regulatory approvals for private activities.

Unfortunately, as detailed extensively in the 2021 edition of *Ten Thousand Commandments*, the liberalizations ended with the inauguration of President Joe Biden. He declared the Trump agenda consisted of “harmful policies and directives that threaten to frustrate the Federal Government’s ability to confront ... problems.”³ Biden initiated a progressive “modernization” of the regulatory review process.⁴ He even reoriented the Office of Management and Budget away from regulatory supervision and restraint and toward the promotion of regulatory initiatives.⁵

The Congressional Budget Office’s February 15, 2023, *Budget and Economic Outlook*, covering fiscal year 2022 and projections for 2023 to 2033, shows discretionary, entitlement, and interest spending of \$6.272 trillion in fiscal year 2022, with spending projected to top \$7 trillion in 2026 and hit nearly \$10 trillion by 2033. Unprecedented open-ended deficits now standing at \$1.4 trillion annually⁶ are expected to top \$2 trillion annually by 2030. The national debt will soon top \$32 trillion,⁷ up from almost \$20 trillion when Donald Trump assumed office in 2017.

Biden’s reversals of the Trump gains are explored in great detail in last year’s edition (2022) of *Ten Thousand Commandments*, and the reader is referred to that report for framing and context.⁸ This new edition will update Biden’s progress on a subset of whole-of-government interventions. It will examine Biden’s climate crisis agenda and his “call for bold and ambitious steps to root out inequity from our economy.”⁹ These efforts have accelerated a longstanding process that is replacing self-determination and limited government with top-down behavioral, social, and civil rights codes.¹⁰

The limited cost–benefit analyses currently being undertaken by agencies rely largely on agency self-reporting and cover only a fraction of rules.¹¹ Regulators remain reluctant to acknowledge when a rule’s benefits do not justify costs.

One of the main enablers of regulatory growth is Congress’s delegation of its law-making power to executive branch regulatory agencies. Agencies have much less visibility than members of Congress and do not have to worry about upsetting voters or finding compromises with the other party. Additionally, many members of Congress are happy to have someone else to blame when regulations backfire or prove controversial.

Crises have also created a boom in regulations. Chief among reforms briefly outlined at the end of this report are those that would require congressional approval of significant or controversial agency rules before they become binding on the public.¹² That way, elected officials could no longer hide behind crisis rulemaking.

Other needed legislative reforms include regulatory sunseting and budgeting; a regulatory reduction commission; and reforms to limit, streamline, and inventory guidance documents. That should be topped off with annual regulatory transparency report cards, perhaps similar in presentation to *Ten Thousand Commandments*.¹³ This report contains six major elements:

1. Bulleted highlights to put key findings in one location
2. A Year 2 update of Biden’s escalation of “helicopter government”
3. An overview of the federal regulatory state, including a taxonomy of categories of unmeasured costs of regulation, and depictions of its size compared with federal budgetary components and gross domestic product
4. An analysis of trends in the numbers of rules and regulations issued by agencies, based on information provided in the Federal Register and in “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Unified Agenda) and a brief survey of executive branch memoranda, notices, and the like
5. Recommendations for reform that emphasize disclosure and holding Con-

gress accountable for the rulemaking under which people live

6. An appendix containing historical tables of regulatory trends over past decades

For the health and stability of any nation, but especially one confronting inflation, supply-chain disruptions, and unprecedented debt, the lawmaking process should be made as transparent as possible and subjected to renewed accountability with restored constitutional norms. Some highlights from the report follow:

- Biden has escalated his whole-of-government campaigns on equity, climate, and other progressive ends.
- Biden's repudiation of the Trump agenda of regulatory cost freezes and streamlining has been thorough. Biden has unleashed Trump-resistant agencies. They quickly moved to remove guidance document portals and now collude on the assorted whole-of-government campaigns.
- Overall final rule counts stood at 3,168 at the conclusion of Biden's second calendar year. That number marks a nearly 29 percent drop from Biden's first-year count of over 4,429, according to the National Archives (which contained 105 Trump midnight rules among them).
- Trump's total of 2,964 final rules in 2019 was the lowest count since record-keeping began in the 1970s and is the only tally below 3,000. In the 1990s and early 2000s, rule counts regularly exceeded 4,000 annually. Trump's rule counts contained some concerted deregulatory elements, for an even lower net.
- Biden's significant final rules—265 at the end of his second year—appear headed to pre-Trump levels, with the costlier subset deemed economically significant already the highest in decades.
- The *Report to Congress* on regulatory costs and benefits and the Unified Agenda provide only partial overviews and are chronically late. Much economic and social intervention in the modern era will never be captured as costs of regulation in the formats that purport to address or score them.
- Given the federal government's failure to provide a regularly updated estimate of the aggregate costs of regulation, this report uses an estimate for regulatory compliance and economic effects of federal intervention of at least \$1.939 trillion annually. This method allows a rudimentary comparison with federal spending and other economic metrics. This report also outlines other interventions that belong in any tally but are typically disregarded.
- Regulatory burdens of \$1.939 trillion amount to nearly 7.4 percent of U.S. gross domestic product, which was \$26.14 trillion in 2022.
- When regulatory costs are combined with federal outlays of \$6.27 trillion, the federal government's share of the entire economy reaches 31.4 percent. State and local spending and regulation would add to these costs.
- If it were a country, U.S. regulation would be the world's ninth-largest economy (not counting the United States itself), ranking behind Canada and ahead of South Korea.
- The hidden regulatory "tax" rivals individual income tax revenues, estimated at \$2.263 trillion for 2022.
- Regulatory costs stand at nearly two-thirds the level of corporate pretax profits of \$3.138 trillion (which have surged from \$2.18 trillion). They greatly exceed estimated corporate income tax revenues of \$382 billion.
- U.S. households pay \$14,514 annually on average in a hidden regulatory tax. This amount exceeds every item in the household budget except housing. A typical American household spends more on embedded regulation than on health care, food, transportation, entertainment, apparel, services, or savings.
- A subset of each year's 3,000-plus rules is deemed "economically significant," which Executive Order 12866 defines as having annual economic effects of \$100 million or more. There were 386

During calendar year 2022, while agencies issued 3,168 rules, Congress enacted 247 laws. Thus, agencies issued 13 rules for every law enacted by Congress.

and 265 rules in calendar years 2021 and 2022, respectively, compared with 463 in 2020 (some deregulatory) in Trump's final calendar year. Trump's three other years produced record-low levels of significant rules. The dip in 2022 notwithstanding, a likely sustained return by Biden to pre-Trump significant rule levels will bear monitoring.

- During calendar year 2022, while agencies issued 3,168 rules, Congress enacted 247 laws. Thus, agencies issued 13 rules for every law enacted by Congress. This "Unconstitutionality Index"—the ratio of regulations issued by agencies to laws passed by Congress and signed by the president—highlights the entrenched delegation of lawmaking power to unelected agency officials. The average ratio over the past 10 years is 22 rules for every law.
- The preliminary 2022 *Federal Register* page count of 80,756 is a 10 percent rise over 73,321 in 2021. Trump's 86,208 pages in 2020 is the second-highest count ever. However, Trump's rollbacks of rules—and historically, there were fewer final rules overall—also added pages to the *Register*.
- By comparison, in 2017, Trump's first year, the *Federal Register* finished at 61,308 pages, the lowest count since 1993 and a 36 percent drop from President Barack Obama's 95,894 pages, which remains the highest-ever count.
- Since 1993, when the first edition of *Ten Thousand Commandments* was published, agencies have issued 118,315 final rules (not including guidance documents). Since the *Federal Register* first began itemizing final rules in 1976, 215,405 have been issued.
- Of 99,429 final rules issued since the Congressional Review Act passed in 1996 during the Clinton administration, just 20 rules have been revoked, including one guidance document.
- The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, DC, jointly estimate that agencies spent \$81.7 billion in fiscal year 2021 to administer and police the federal administrative apparatus. Embedded in the federal budget, these amounts are separate from compliance, economic, and other burdens of federal intervention.
- During calendar year 2022, 2,044 proposed rules (267 deemed significant) were published in the *Federal Register*, up from 1,780 in 2021 (an all-time low compared with the surge in final rules to over 4,000). A count of 2,131 proposed rules in 2019 was Trump's highest, whereas Trump's 1,834 in 2017 is the second-lowest tally. Obama's lowest count was 2,013 in 2009, his first year in office.
- In addition to 3,168 final rules in 2022, there are future rules to consider. According to the fall 2022 edition of the twice-yearly "Unified Agenda of Federal Regulatory and Deregulatory Actions," 69 federal departments, agencies, and commissions have 3,690 upcoming regulatory actions in the pipeline. This number is down slightly from 3,777 in 2021. Those rules are at various stages of implementation:
 - 2,651 rules in the active phase (pre-rule, proposed, final)
 - 443 recently completed rules
 - 596 long-term rules
- The active rule count in the Unified Agenda under Biden is the highest it has been since 2011.
- By contrast, Trump's final Unified Agenda contained a higher count of 3,852 rules, but 653 of them had been deemed deregulatory via Trump's now-repealed Executive Order 13771 for a lower net. The breakdown was as follows:
 - 2,636 rules in the active phase, of which 496 were deemed deregulatory
 - 630 completed rules, 101 deemed deregulatory
 - 586 long-term rules, 56 deemed deregulatory
- Of the 3,690 regulations in the fall 2022 Unified Agenda's pipeline, 332 are economically significant rules, up 12 percent from 295 in 2021, as follows:

- 244 rules in the active phase (pre-rule, proposed, final)
- 53 completed rules
- 35 long-term rules
- The 332 economically significant rules in Biden’s fall 2022 Unified Agenda regulatory pipeline far outstrip the Obama years, and they represent a 27 percent increase over the gross count of 261 in Trump’s final calendar year of 2020. Thirty-six of the economically significant rules in 2020 were deemed deregulatory for Trump’s net regulatory count of 225, which Biden tops by 47 percent.
- Economically significant regulations are a special category of significant regulations. These rules each have at least \$100 million of economic impact. The Biden administration’s spring and fall 2022 editions of the Unified Agenda contained a combined 89 (compared with 105 in 2021) completed economically significant rules. Even taking the dip into account, Biden’s count of completed economically significant rules is higher than anything seen in the Bush, Obama, and Trump years.
- Of the 97 completed economically significant rules presented in the spring and fall 2020 editions of the Unified Agenda under Trump, 21 were deemed deregulatory. The yearly average for Obama’s eight years was 69; President George W. Bush’s average over his term was 49. Trump’s average was 72, but his Unified Agendas are the first and only to contain rules expressly designated deregulatory, a designation removed by Biden.
- For calendar year 2022, the Government Accountability Office (GAO) reveals 76 finalized major rules—yet another category similar to the economically significant tally in the Unified Agenda, but slightly broader. George W. Bush’s administration issued 492 major rules for an average of 61 major rules annually, whereas Obama’s administration accounted for 675, an annual average of 84. Trump’s four-year total was 343 for an average of 86, but a significant portion were deemed deregulatory.

These tallies emphasize calendar year and therefore ignore preinaugural days attributable to a predecessor in transition years. They also reflect retroactive changes that have occurred in the GAO’s online database.

- Final rules affecting small business appear to be mounting and could serve as a source of calls for reform. Outstripping both Trump and Obama, Biden’s administration saw 915 and 916 final rules, respectively, far higher than any other year during the past decade. The significant subset, however, has not reattained pre-Trump heights and so bears monitoring.
- Of the 3,690 rules and regulations in the fall 2022 Unified Agenda pipeline, 707 affect small businesses. This count is up from 635 in 2020 under Trump, of which 83 had been deemed deregulatory. Of Biden’s 707, 349 required a regulatory flexibility analysis, which is an official assessment of small-business impacts. An additional 358 were otherwise noted by agencies to affect small businesses in some fashion.
- Many federal rules affect state and local governments. Rules in the Unified Agenda pipeline affecting state governments stand at 550 and rules affecting local governments at 387, levels not seen since 2001.
- The five most active rule-producing executive branch entities—the departments of the Interior, the Treasury, Transportation, Commerce, and Health and Human Services—account for 1,501 rules, or 41 percent of all rules in the Unified Agenda pipeline. The five most active independent agencies account for another 322 rules.
- Biden issued just 29 executive orders in 2022, after issuing 77 in 2021. This reduction reflects a change in strategy, rather than a more modest view of executive power. Biden’s memoranda continue to outstrip recent predecessors; these typically escape formal review. Trump issued 16 executive orders before Biden’s inauguration, for a total of 93 in 2021. For comparison, Trump issued

Biden’s count of completed economically significant rules is higher than anything seen in the Bush, Obama, and Trump years.

69 executive orders in 2020. Trump had issued 47 executive orders in 2017, 35 in 2018, and 63 in 2019.

- From the nation's founding through 2022, more than 15,611 executive orders have been issued. Trump issued 220 in only four years, whereas Obama issued a total of 276 over eight years, similar to George W. Bush's 291. Before the 20th century, most presidents had issued no more than a few dozen. In contrast, Woodrow Wilson issued 1,803, Calvin Coolidge issued 1,204, and Franklin D. Roosevelt issued 3,467.
- Forty-six presidential memoranda appeared in the *Federal Register* database in 2022, compared with 30 in 2021, 26 of which were from Biden, and four from

Trump. This number compares with 49 from Trump in 2020, after having issued 35, 29, and 24 from 2017 to 2019, respectively. George W. Bush issued 129 memoranda during his presidency that were published in the *Federal Register*, and Barack Obama issued 255.

- Public notices in the *Federal Register* always exceed 21,000 annually, with uncounted guidance documents and other proclamations with potential regulatory effect among them (other guidance documents are issued that do not appear in the *Register* at all). In 2022, 22,505 notices were issued according to the *Federal Register* database. There have been 683,595 public notices since 1994 and over 1 million since the 1970s.

Biden's Regulatory "Modernization" Continues Whole-of-Government Pursuit of Coercive Progressivism

The 2022 edition of *Ten Thousand Commandments* extensively surveyed the Biden administration's executive actions, rules, and memoranda that reversed the Trump regulatory policy and attenuated the Office of Management and Budget (OMB) regulatory watchdog role.¹⁴ It also called attention to Biden's activist whole-of-government replacement of constitutional norms with progressive social and economic regulatory transformations. The most prominent of these are the unequal treatment of citizens based on ethnicity, group membership, and background with an equity agenda;¹⁵ and the imposition of a climate crisis agenda via extraordinary nationwide economic and financial controls.¹⁶ Add to these a series of monopolistic economic interventions under a contradictory "competition policy" rubric.¹⁷

This whole-of-government cartelization of agencies and agendas continues to expand

at the administration's midpoint. Whole-of-government machinery already regulates long COVID,¹⁸ digital currency,¹⁹ "super-pollutants,"²⁰ a national whole-of-society campaign on mental health,²¹ and expanded welfare programs in the name of addressing "food insecurity."²² Whole-of-government initiatives target new sectors, as with Biden's Executive Order 14081, "Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy." This new venture seeks to "coordinate a whole-of-government approach to advance biotechnology and biomanufacturing towards innovative solutions in health, climate change, energy, food security, agriculture, supply chain resilience, and national and economic security."²³

Biden's interventions initially surveyed last year are encapsulated in Box 1. It is clear that today's federal government is incapable of leaving anything or anyone alone. These

Box 1. Some of Biden's Initial Escalations of Federal Economic and Social Controls

- Repudiation of the Trump regulatory streamlining agenda and erosion of legacy regulatory oversight, including removal of new infrastructure for public disclosure of guidance documents
- Whole-of-government equity: spending, regulatory redistributions, and subregulatory guidance to advance an equity agenda characterized by widespread differential treatment based on group membership, imposed with the significant heft the federal government has attained in procurement and contracting
- Whole-of-government climate and environmental activism at an economy-transforming scale, threatening basic energy access and livelihoods
- Whole-of-government competition policy, consisting of antitrust and other central government interventions from agriculture to high tech
- Industrial policy and distortionary infrastructure spending and subsidies with regulatory effect; these range from routine infrastructure to large-scale projects like nationwide vehicle charging stations, not merely regulating but replacing the private economy while imposing union labor
- Mandates rationalized by COVID-19 that burden businesses and households and suppress the voicing of dissenting opinions on private online platforms and escalation of surveillance

new developments are enabled by the federal government's increasingly dominant role as an employer; its extraordinary procurement heft (Washington boasts of being the largest purchaser of goods and services on earth²⁴); its contracting immensity (accompanied by costly union-labor mandates); and its expansive use of emergency powers.²⁵

Biden's escalations have been aided by rapid-fire crisis legislation costing trillions of dollars. The American Rescue Plan²⁶ was followed by a bipartisan infrastructure package²⁷ and the Inflation Reduction Act. Together, these were the largest "climate investments" ever made by government.²⁸

The bipartisan CHIPS and Science Act legislation, purportedly addressing competition with China, also includes diversity grants and civil rights programs.²⁹ "All of those pieces of legislation that are now law had what—we believe equity [is] at the center of it," White House spokesperson Karine Jean-Pierre offered in November 2022.³⁰

Future economic crises and societal discord are being baked in by the progressive transformation of the constitutional order. When these policies fail, the failures will trigger cries for still more regulation. This action will continue indefinitely without steps to prevent crisis exploitation.³¹ The remainder of this section surveys some notable ostensibly COVID-related Biden policies and pursuits of 2022 and sounds the alarm over their implications.

Aggravating and Prolonging Post-Pandemic Price Inflation and Supply Disruptions

For Biden, economic relief consists of top-down transformations of the energy economy and expansion of access to government spending programs.

The Unified Agenda—whereby Biden extends government investments to "cut the

costs of child care and health care [and] help families pay for other essentials"—will worsen inflation.³² This report finds Biden furthering pandemic-rooted test runs for the universal basic income³³ by such means as Medicaid expansion into housing, food, and furniture welfare payments.³⁴

Bureaucracy and regulation can cause shortages and supply-chain disruptions and raise prices.³⁵ This administration instead blames other countries, railroads, and oil companies that are threatened with penalties for their "record-setting profits"³⁶ and "war profiteering."³⁷ Biden takes credit for price dips, however.³⁸

Electoral concerns forced occasional admissions of failure.³⁹ These included (a) a \$6 billion bailout of aged nuclear power plants,⁴⁰ (b) a failed urging of Saudi Arabia to delay cuts in oil production,⁴¹ (c) a license for Chevron to resume oil shipments from Venezuela to the United States,⁴² (d) a proposed gas tax holiday,⁴³ and (e) the spectacle of drawdown of the strategic petroleum reserve (some of which was sold overseas⁴⁴). These steps attempted to correct for self-inflicted, artificial crises and handicaps.⁴⁵

Draft White House talking points called the Organization of Petroleum Exporting Countries' cuts a "total disaster" that could be taken as a "hostile act,"⁴⁶ but those observations apply more fittingly to U.S. supply restrictions. Biden, whose own National Environmental Policy Act revisions may impede infrastructure development,⁴⁷ remarked, "When it comes to the gas prices, we're going through an incredible transition." Transportation Secretary Pete Buttigieg stated in a 2022 congressional hearing, "The more pain we are all experiencing from the high price of gas, the more benefit there is for those who can access electric vehicles."⁴⁸

Industrial policy and a shift away from federalism and local decision making in 2022 have increased the nation's vulnerability to new crises and supply disruptions. The United States received aid packages of powdered baby formula from other nations

because legacy regulations had suppressed domestic competition.⁴⁹ Biden's reaction to the baby formula shortage was yet more Defense Production Act emergency powers, this time via a memorandum handing new authorities to the Department of Health and Human Services, plus Food and Drug Administration (FDA) guidance on WIC (Special Supplemental Nutrition Program for Women, Infants, and Children) waivers and increased access to government programs.⁵⁰ The White House could not simply say "yes" when asked whether a relaxation of baby formula imports could be made permanent, an act mirrored in Biden's retention of aluminum tariffs.⁵¹

American farmers had to battle a resistant Secretary of Agriculture Thomas Vilsack to release certain "prime" farmland from the Conservation Reserve Program⁵² to enable spring crop planting.⁵³ As the Competitive Enterprise Institute's Ben Lieberman noted, the Environmental Protection Agency's (EPA) emergency waiver allowing diversion of corn for 15 percent ethanol blends (for the few who could take advantage during the summer) could potentially aggravate food price inflation.⁵⁴

Biden did have a few minor regulatory liberalizations, like allowing hearing aids to be sold over the counter. The Treasury Department issued a report promoting competition, deregulation, and the reduction of excise taxes that impede competition in the alcohol industry.⁵⁵ Seat sizes on airliners may escape increased regulation.⁵⁶

Many promising regulatory developments petered out, however. Biden's Trucking Action Plan, with its "cutting red-tape in Commercial Driver's licensing," and increased Department of Labor-registered apprenticeship provisions are less deregulation than they are partial concessions to protect federal authority,⁵⁷ as other trucking and energy regulations are on the rise. The Federal Motor Carrier Safety Administration sought comment on the "extent to which motor carriers currently rely on the emergency declaration to deliver certain commodities and whether

there has been any impact on safety."⁵⁸ Likewise, telehealth leniency is subject to lapse.⁵⁹ Catch-up regulatory relaxation in response to gas prices, such as a Jones Act waiver to ease shipping restrictions,⁶⁰ may not prove permanent.

Other moves are at cross-purposes, such as reducing rent to build wind and solar generation on public lands⁶¹ while curtailing fossil-fuel extraction on public lands.⁶²

The Environmental Justice and Climate Crisis Cross-Agency Push

EPA is pushing new rules on particulate matter, power plant mercury, and other toxic emission rules,⁶³ some of which are reactions to Trump liberalizations.

The Council on Environmental Quality has guidance on carbon capture regulations,⁶⁴ while the Interior Department is undertaking rulemakings on methane leaks, venting and flaring affecting fossil-fuel operations on public lands, and greenhouse gas emissions for power plants. The administration eyes some of these for completion before a potential Republican president and Congress could use the Congressional Review Act to overturn them in 2025.⁶⁵

In Biden's inaugural call for "tackling the climate crisis at home and abroad," the president instructed agencies to

prioritize action on climate change in their policy-making and budget processes, in their contracting and procurement, and in their engagement with State, local, Tribal, and territorial governments; workers and communities; and leaders across all the sectors of our economy.⁶⁶

Reinforcement of this message appears in Biden's "Roadmap to Build a Climate-Resilient Economy,"⁶⁷ as well as in Equity Action Plans from more than 90 agencies.⁶⁸ In the wake of the Inflation Reduction Act,

EPA is allocating hundreds of billions in green energy spending,⁶⁹ and in November 2022 sought public input on allocating another \$13 billion released by the legislation to fight the climate crisis and advance environmental justice.

EPA also reports on stronger enforcement of “environmental violations with disproportionate impact on underserved communities.”⁷⁰ The White House Council on Environmental Quality is developing and seeking feedback on a Climate and Economic Justice Screening Tool that agencies will use in “implementation of the Justice40 Initiative goal of directing benefits of certain federal investments to disadvantaged communities,”⁷¹ and it has appointed a senior director for environmental justice to coordinate across government.⁷²

Attorney General Merrick B. Garland launched a “first-ever Office of Environmental Justice to oversee and help guide the Justice Department’s wide-ranging environmental justice efforts.”⁷³ The Department of Health and Human Services is pursuing an Environmental Justice Strategy and Implementation Plan.⁷⁴

Equity and Climate Requirements for Private Industry

Outside the environmental sphere, the Treasury Department and other agencies host various meetings on Biden’s equity pursuits.⁷⁵ The Office of Personnel Management in October 2022 “convened the first meeting of the Chief Diversity Officers Executive Council” in an administration that sees it as a model for imposing diversity, equity, and inclusion (DEI) policies across society, not solely in government.⁷⁶ Accordingly, corporations like Citibank and Amazon are on board with environmental justice and racial equity audits,⁷⁷ while the entire ESG agenda is pushed by leading investment funds.⁷⁸ Businesses are writing prophylactic self-regulation like racial and gender diversity quotas into credit agreements with banks.⁷⁹

The Federal Reserve has launched a seminar series on “Inclusive Recovery.”⁸⁰

Financial regulations are advancing climate and equity goals. The Employee Benefits Security Administration (EBSA) at the Department of Labor in 2021 advised pension fund managers that “climate change and other ESG factors are often material and . . . in many instances fiduciaries should consider climate change and other ESG factors in the assessment of investment risks and returns,”⁸¹ and it has now released its final rule.⁸²

EBSA’s ambitions continue in a “request for information” soliciting public input on the agency’s future work “to protect the life savings and pensions of U.S. workers and families from the threats of climate-related financial risk.”⁸³ EBSA is working with entities such as Treasury’s Financial Stability Oversight Council that share authority to extend the limits of the Employee Retirement Income Security Act.⁸⁴ Treasury Secretary Janet Yellen called for “redoubl[ing] our efforts to decarbonize our economies” via a “whole of economy” approach.⁸⁵

Though technically independent of the White House’s agenda, the Federal Reserve touts “climate change and financial stability” custodianship of the banking system,⁸⁶ and “climate scenario analysis” to steer capital away from fossil energy.⁸⁷ Although Federal Reserve Chair Jerome Powell claimed, “We are not, and will not be, a ‘climate policymaker,’”⁸⁸ staffers who will outlast him are on standing formal committees and pilot programs devoted to the cause.⁸⁹

On tap from the putatively independent Securities and Exchange Commission are standardized disclosures and target meetings on greenhouse gas emissions, energy use, and alleged exposure to climate-related risks.⁹⁰ From the Federal Deposit Insurance Corporation, one sees a “Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions.”⁹¹ Such incursions are costly. They threaten sectors like small farms and ranches⁹² and put millions of retirees’ investments at risk.⁹³

Other avenues of advancing the green agenda are well under way. The Department of Energy's energy efficiency standards for federal buildings and standards for the nation's public school infrastructure are a given in this setting.⁹⁴ Contractors for the Defense Department, General Services Administration, and NASA must now meet climate targets,⁹⁵ even as these same bodies issued rules to raise the hourly minimum wage paid to federal contractors;⁹⁶ undertake "pay equity and transparency";⁹⁷ and require that "small business contracting procedures, e.g., set-asides, [must] apply to overseas procurements."⁹⁸

State transportation departments and cities must measure and meet Federal Highway Administration targets, because "extreme weather due to climate change threatens the safety and mobility of Americans and challenges the stability of supply chains."⁹⁹

Prominent senators in the president's party are demanding that he declare a climate emergency and push through even more regulations on that basis.¹⁰⁰ The White House's actions reviewed here are not far from that position.

Caution: Federal Control of Payment Systems to Further the Whole-of-Government Regulatory Agenda

The Treasury Department under Janet Yellen intends to regulate cryptocurrency.¹⁰¹ Biden has endorsed the Federal Reserve Racial and Economic Equity Act, which would enlist cryptocurrencies in service of regulatory pursuits.¹⁰² The legislation, which passed the House in the 117th Congress, would "add additional demographic reporting requirements" and "modify the goals of the Federal Reserve System" by requiring the Fed's Board of Governors and the Federal Open Market Committee to "exercise all duties and functions in a manner that fosters the elimination of disparities across racial and ethnic groups

with respect to employment, income, wealth, and access to affordable credit."

Even the White House Office of Science and Technology Policy (while pursuing "sustainable chemistry"¹⁰³) is mobilizing on cryptocurrencies¹⁰⁴ in the wake of Biden's March 2022 Executive Order 14067, "Ensuring Responsible Development of Digital Assets." Biden's order purports

to reduce the risks that digital assets could pose to consumers, investors, and business protections; financial stability and financial system integrity; combating and preventing crime and illicit finance; national security; the ability to exercise human rights; financial inclusion and equity; and climate change and pollution.¹⁰⁵

Policymakers should recognize that tighter control of payment systems can help implement much of Biden's whole-of-government planning on climate, equity, and medical and social welfare tracking. The pressures brought to bear via digital payment systems can be extraordinary. These Biden efforts share a kinship with Obama-era "Operation Choke Point" maneuvers to cut off financial services to certain industries deemed distasteful by those in power.¹⁰⁶

Censorship and Misinformation Debates in the Context of the Intolerant Regulatory State

Last year's *Ten Thousand Commandments* touched on censorship and "misinformation" debates that the 118th Congress is now exploring. Recent developments include the "Twitter files" on tech and government collusion on censoring social media and the surgeon general's high-profile call on Big Tech to turn over COVID-19 misinformation data, including the sources of those data, to the government.¹⁰⁷ Normal rights of dissent and redress of grievances against

an overweening regulatory state are being threatened.

In 2022, Biden's National Science Foundation paid out, largely to universities, nearly \$39 million in government grants and contracts to combat "misinformation" and viral "populist ideas."¹⁰⁸ His Department of Health and Human Services and the Centers for Disease Control and Prevention paid screenwriters, comedians, and other influencers to mock the unvaccinated.¹⁰⁹ In 2022, the United States Postal Inspection Service, which houses an Internet Covert Operations Program, conducted blanket keyword social media searches for terms like "protest," "attack," and "destroy."¹¹⁰

Biden's Department of Homeland Security (DHS) repeatedly warns of "the proliferation

of false or misleading narratives, which sow discord or undermine public trust in U.S. government institutions."¹¹¹ Other leaked documents outline an even broader policing effort by DHS.¹¹² Even nonbelievers might be concerned that the Federal Bureau of Investigation in 2023 is circulating internal memos warning of "radical traditionalist Catholic ideology."¹¹³

The Internal Revenue Service (IRS) in 2022 deleted a job posting seeking applicants willing to "use deadly force."¹¹⁴ The deletion may be a comfort to some, but the IRS is also adding 80,000 to the personnel roster. The IRS has been unfriendly toward anonymity in the use of cryptocurrency, and it seeks to require facial scans to access tax returns online, as well as mandatory reporting of all small-dollar transactions.¹¹⁵

Competition Policy That Exiles Competitive Enterprise Harms Equity

Biden has repeatedly claimed, “I’m a capitalist.” He also rightly says that capitalism without competition is “exploitation.”¹¹⁶ However the top-down vision Biden promotes, which is embodied in his problematic White House Competition Council,¹¹⁷ is hardly the building of an economy “from the bottom up and the middle out” that he claims to champion.¹¹⁸

These themes were covered in the last edition of *Ten Thousand Commandments*, so this report looks simply at Biden’s views on administering laws like the CHIPS and Science Act, which Biden claimed “is not handing out blank checks to companies” and would “be laser-focused on the guardrails that’s going to protect taxpayers’ dollars.”¹¹⁹

Biden asserts, “We’ll make sure that companies partner with unions, community colleges, technical schools, and offer training and apprenticeships. ... We’re going to make sure the work—small and minority-owned businesses get to participate. ... Because in this law, I have the power to take back any federal funding from these companies if they don’t meet these requirements.”¹²⁰

This assertion is an attempted political capture of the technology sector. Similar strictures apply in Biden’s barnstorming promotions of the American Rescue Plan and the infrastructure and inflation laws,¹²¹ the Made in America covenants of which are aggravating trade war with U.S. allies.¹²² Stricter definitions of prevailing wages to encourage union labor¹²³ will mean higher prices for consumers. But as Biden remarked of certain of the Bipartisan Infrastructure Law projects in January 2023, “and all of

it—all of it is union labor. All of it. Every freaking one, union labor. You all think I’m kidding? I’m not.”¹²⁴ Biden’s is a broad vision of regulatory intervention in labor markets, aimed at those outside subsidy recipients. “Here we come,” Biden said to Amazon in an April 2022 unionization pitch.¹²⁵

The infrastructure law doubles down on the coercive renewables transition by, for example, picking winners in commercial-scale battery production for electric vehicles. In October 2022, Biden boasted of giving billions of dollars to 20 companies across 12 states. To get the funding, applicants were asked “how they’re going to partner with community colleges, minority-serving institutions, labor unions, and local organizations to provide job training for workers and benefits for the whole community.”¹²⁶

Biden’s White House Competition Council has also grown more ambitious about sweeping price control regulations, which cause shortages and disrupt supply chains. Targeting prescription drug prices,¹²⁷ for example, has been a shared passion of both Biden and Trump. The fourth meeting of the White House Competition Council in February 2023 highlighted several multiagency pushes, including proposals to lower credit card late fees from \$31 to \$8, end certain hotel and airline charges, and regulate bank overdraft assessments, all charges that Washington calls “junk fees.”¹²⁸ Rulemakings are under way on airline ancillary fees with additional rules and guidance in development.¹²⁹

Biden’s economic and social interventions increase the costs of doing business and of creating real, as opposed to government and

unionized, contractor jobs. The common denominator of all is the expansion of the spending and regulatory state.

At the CEO Summit of the Americas, an event purporting to peg the “root causes of migration” on not enough government, Biden called for alliances replicating whole-of-government campaigns throughout the Western Hemisphere.¹³⁰ “That’s what this is all about,” Biden remarked, “responding to basic human desires that we share for dignity, for safety, and for security.”¹³¹ The “this” to which Biden refers is more central government.

The same occasion found Vice President Kamala Harris imploring the corporate sector to get in line with the wider agenda of government’s taking on ordinary life duties. “Imagine a scenario ... a woman in Honduras ... single, no kids, no education,” Harris remarked, in the setup of an appeal calling for welfare, international aid, food programs, digital wallets, and subsidized broadband.¹³² The administration’s vision also welcomes cross-ocean coordination on antitrust and climate¹³³ and overseas privacy.¹³⁴

Getting Beyond a Federal Regulatory Budget and the Limitations of Administrative Reform

Federal programs are funded either by taxes or by borrowing, with interest, from future tax collections. When Congress spends, no one questions that disclosure is necessary for voters to hold representatives accountable. Taxpayers can observe those decisions during the authorization and appropriations processes. They can inspect the costs of programs and agencies in Congressional Budget Office publications and in the federal budget's historical tables.¹³⁵ Disclosure for spending exists, however difficult it may be to access specific information.

Regulation and spending are mechanisms by which governments act or compel. Rather than taxing and paying directly, Congress often “funds” objectives with federal regulation to compel the private sector, as well as state and local governments, to bear the costs of federal initiatives. Regulation in such instances functions as an off-budget form of taxation and spending. The costs and economic effects of regulatory compliance are not budgeted and disclosed the way fed-

eral spending is, so regulatory initiatives can commandeer private-sector resources with relatively little public controversy.

Policymakers may find it easier to impose regulatory costs that have less disclosure and accountability than traditional spending programs. When regulatory compliance costs prove burdensome, Congress can escape accountability by blaming an agency for issuing an unpopular rule.

Although disclosure of spending obviously does not stop deficits and debt, it is still vital for making progress toward those ends. Likewise, policymakers should disclose regulatory costs to the fullest extent possible so that the decision of whether to regulate can at least have an opportunity to get the full consideration it deserves.

Table 1 provides an overview of the 2022 federal regulatory enterprise to be discussed in the following pages.

Table I. The Regulatory State: An Overview for 2023

	Year-End 2022	1-Year Change (2021–2022)	5-Year Change (2018–2022)	10-Year Change (2013–2022)
Total regulatory costs	\$1.927 trillion	n/a	n/a	n/a
Federal outlays	\$6.272 trillion			
Federal deficit	\$1.375 trillion			
Individual income taxes (estimated)	\$2.3 trillion			
Corporate income taxes (estimated)	\$382 billion			
Corporate pretax profits	\$3.1 trillion			
Gross domestic product	\$25.46 trillion			
Agency enforcement budgets*	\$81.7 billion	0.3%	10.8%	19.8%
<i>Federal Register</i> pages	80,756	10.1%	20.1%	1.8%
Devoted to final rules*	23,634	–28.7%	26.2%	–4.3%
<i>Federal Register</i> final rules	3,168	–28.5%	–5.9%	–13.4%
Significant final rules	265	–31.0%	32.0%	–20.0%
<i>Federal Register</i> proposed rules	2,044	14.8%	–2.6%	–21.2%
Significant proposed rules	262	–4.0%	9.0%	–16.0%
<i>Federal Register</i> , small business final rules	916	0.1%	21.5%	27.4%
Subset of significant final rules	72	–30.0%	41.0%	–30.0%
Proposed rules	646	–19.7%	13.9%	0.2%
Subset of significant proposed rules	67	–24.0%	–4.0%	–42.0%
“Notices” in <i>Federal Register</i>	22,505	2.4%	2.2%	–7.2%
Code of Federal Regulations pages	188,346	0.9%	1.0%	7.9%
Total rules in Agenda pipeline	3,690	–2.3%	4.4%	11.6%
Completed	443	–6.7%	–7.7%	–4.1%
Active	2,651	–1.0%	10.5%	10.6%
Long term	596	–4.5%	–9.0%	36.6%
“Economically significant” rules in the year-end pipeline	332	12.5%	90.8%	73.8%
Completed	53	32.5%	112.0%	89.3%
Active	244	19.0%	106.8%	86.3%
Long term	35	–30.0%	12.9%	9.4%
“Economically significant” rules completed in spring and fall 2022	89	–15.2%	154.3%	74.5%
Rules affecting small business	707	2.0%	16.9%	5.7%
Regulatory flexibility analysis required	349	–1.4%	5.8%	–10.7%
Regulatory flexibility analysis not required	358	5.6%	30.2%	28.8%
Rules affecting state governments	550	7.0%	68.2%	49.5%
Rules affecting local governments	387	19.1%	94.5%	75.1%
GAO Congressional Review Act reports on major rules	76	–41.1%	40.7%	16.9%
Executive Orders	29	–68.8%	–17.1%	20.9%
Executive Memoranda	46	53.3%	58.6%	43.8%

n/a = not applicable; GAO = Government Accountability Office. Some years fiscal, some years calendar—see text for more information.

* year-end 2021

The Unknowable Costs of Regulation and Intervention and a \$1.939 Trillion Estimate

The federal government undertakes little review of federal regulation to ensure that regulations individually do more good than bad each year, and it performs no assessment whatsoever of regulatory burdens as a whole.

The last aggregate annual estimate of the cost of the regulatory enterprise, a task required by law,¹³⁶ was performed in 2002.¹³⁷ Although it might be unfair to say Washington does not know how to count, one can say Washington refuses to do so. There is the small number of counted regulations but also the uncounted, the uncountable, the omitted, and the ignored, each awaiting disclosure.

The federal escalations of the past three years vastly expanded the scope and cost of existing regulatory enterprises that were already uncaptured and untabulated in cost estimates, and they added new ventures atop them. In law¹³⁸ but not in practice,¹³⁹ the sole official reckoning citizens receive regarding the scale and scope of regulatory costs is an annual Office of Management and Budget (OMB) survey of a subset of regulatory costs and benefits, the *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*.¹⁴⁰

These reports, not seen in years, contain a limited overview of significant rules and a suspect partial monetary quantification of costs and benefits of a handful of executive agencies' rules during the current fiscal year and the most recent 10 years.

OMB's *Report(s) to Congress on the Benefits and Costs*, for fiscal year (FY) 2020, FY 2021, FY 2022, and now FY 2023 have yet

to appear. The 2017 edition covering FY 2016 Obama-era rules and regulations arrived years overdue in December 2019,¹⁴¹ a delay unprecedented up until that time.¹⁴² During the Trump administration, a surge to catch up brought forth a truncated *Draft Report* combining the overdue FY 2018, FY 2019, and FY 2020 reports in one abbreviated volume the day before Christmas Eve in 2019,¹⁴³ along with supplemental tables in electronic format, but without the 10-year look-backs that had become standard after the aggregate estimate required by law was abandoned.¹⁴⁴ Undated final reports for those years, covering the period through FY 2019, appeared on OMB's website with its URL indicating a January 2021 upload.¹⁴⁵ At least during the Trump years, the public did get year-end status reports on Trump's one-in, two-out Executive Order 13771 directive on agency regulations. These have now been purged from the OMB website on which they should continue to reside as historical material (the now-delinked URL is <https://www.reginfo.gov/public/do/eAgendaEO13771>).

OMB's last 10-year survey—that of FY 2016 in the 2017 *Report to Congress*—conveyed that federal executive agencies published 36,255 final rules in the *Federal Register*, of which OMB reviewed 2,670 under Executive Order 12866 (independent agencies are exempt from this process). Of those OMB-reviewed rules issued between 2006 and 2016, 609 were considered “major.” As typical, OMB claimed high net regulatory benefits, pegging the cumulative benefits of a selection of 137 major rules at between \$287 billion and \$911 billion (in 2015 dollars). By comparison, the estimated range for

**OMB's Report(s)
to Congress on
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Costs, for fiscal
year (FY) 2020,
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appear.**

the decade's costs was declared to be \$78 billion to \$115 billion. The 16 rules subjected to both benefit and cost analyses during FY 2016 added annual costs in the range of \$4.3 billion to \$6.4 billion.

The Trump era (and final to date) composite report covering fiscal years 2017–2019 encompassed a handful of major rules with reported total costs and benefits of only a few billion each.¹⁴⁶

- FY 2017: \$6.9 billion to \$11 billion in annual benefits; \$2.5 billion to \$3.7 billion in annual costs (2016 dollars)
- FY 2018: \$0.2 billion to \$0.6 billion in annual benefits; \$0.1 billion to \$0.3 billion in annual costs (2017 dollars)
- FY 2019: \$0.2 billion to \$3.7 billion in annual benefits; up to \$0.6 billion in annual costs (2018 dollars)

The cumulative high end for costs in the three recent fiscal years is about \$4.6 billion, compared with about \$105 billion for the prior 10 years,¹⁴⁷ for an average of \$8.4 billion in costs added every year for the past 13 years. Although OMB's reports did not tally an additional swathe of rules with costs but not benefits tabulated, such rules are presented as well. Going back to 2002, there are dozens of such "cost-only" rule disclosures, with high-end cost estimates that add another \$54 billion to the cumulative totals.¹⁴⁸

The foregoing assessments do not capture all regulatory costs, and they are not objective third-party assessments. Agencies grade their own homework, as OMB acknowledges in the 2018–2020 *Report to Congress*: "As has been the practice for many years, all estimates presented ... are agency estimates of benefits and costs, or minor modifications of agency information performed by OMB."¹⁴⁹ Ultimately, the regulators themselves decide what counts as major and is worth the trouble of cost–benefit analysis. OMB's report "does not purport to demonstrate all costs or benefits from federal regulation; instead, the report summarizes the anticipated costs and benefits that the Regulatory Impact Analyses (RIAs) of individual final rules reported for those

rules."¹⁵⁰ The report acknowledges an "often-overlooked detail"—that "the totals listed ... include only the benefits and costs for the minority of rules for which both those categories of impacts were estimated."¹⁵¹

Overall, the 2018–2020 consolidated *Report to Congress* encompasses only 145 major rules, a small number compared with the more than 9,500 rules—from large to inconsequential—issued during the time frame.¹⁵² Of the 145 major rules, the three-year report featured only 30 rules with both benefits and costs "quantified and monetized" and another 28 with costs alone quantified, in some cases partially.¹⁵³ OMB asserts the major rules it reviews, including budget rules, "represent approximately one-fourth" of the significant regulatory actions reviewed by OMB.¹⁵⁴

The bottom line is that of the few hundred major rules issued by executive agencies since 2001, a relative handful received OMB-reviewed quantified cost analysis, let alone cost *and* benefit analysis. Overall, about 38 percent of these rules had quantitative cost estimates.¹⁵⁵ When one looks beyond the self-designated major rules, the proportion of all rules with any cost analysis averages less than 1 percent.¹⁵⁶

On the Unified Agenda's Advanced Search page, there exists a radio-button selection for "Agency has reported Compliance Cost Information," which a pop-up defines as "the estimated gross compliance cost of the action." Only one active 2022 item is flagged, a holdover Defense Department regulation.¹⁵⁷ No completed or long-term actions reported any cost information.

OMB claims the major rules it reviewed account for the bulk of regulatory costs. That is not even close to being true.¹⁵⁸ Earlier OMB reports admitted this. OMB analysts do not review independent agency rules, which include major agencies such as the Federal Communications Commission and financial regulatory bodies whose regulations can have multibillion-dollar economic effects. The OMB review ignores entire cat-

egories of economic and social regulation, as depicted in Box 2 later in this report. Even the Unfunded Mandates Reform Act, which is also surveyed in the *Report to Congress*, exempts a great deal of regulatory intervention from critical analysis.¹⁵⁹

Transfer and budget programs, for example—unless directly related to national defense or criminal justice—are inherently interventionist and regulatory in nature. Federal medical programs have altered the medical market to such an extent that single-payer insurance is now contemplated as an alternative to skyrocketing, regulation-driven costs. Yet the costs and market distortions caused by such federal spending are not counted.¹⁶⁰ Nor are the deadweight effects of such budget rules, even when the federal government has taken over a substantial portion of retirement and health care funding.¹⁶¹ Washington’s expansion of middle-class dependency on federal government transfers is about as fundamental as social regulation gets, yet it is not counted among costs.¹⁶²

The fundamental problem with the regulatory *Report to Congress* is that net-benefit analysis helps fuel indefinite government expansion. Creative regulators can alternate between maximizing net benefits—as in OMB’s 19-year-old “Circular A-4” guidance on regulatory analysis instructs—and claiming that benefits “justify” costs as specified in Executive Order 12866.

In addition, costs of regulatory dark matter—such as agency memoranda, guidance documents, bulletins, circulars, and manuals—do not appear in OMB’s annual assessments. Nor does OMB analyze executive orders’ effects.¹⁶³ OMB ignores most of the regulatory universe.

In contrast to the traditionally narrow OMB focus, a 2019 report from the Trump-era Council of Economic Advisers, *The Economic Effects of Federal Deregulation*, pointed to hundreds of billions of dollars in direct and indirect annual savings from changes not just in a set of rules removed, but also in approaches to regulation as follows:

The Council of Economic Advisers (CEA) estimates that after 5 to 10 years, this new approach to Federal regulation will have raised real incomes by \$3,100 per household per year. Twenty notable Federal deregulatory actions alone will be saving American consumers and businesses about \$220 billion per year after they go into full effect. They will increase real (after-inflation) incomes by about 1.3 percent. ... This new approach to regulation not only reduces or eliminates costly regulations established by prior administrations but also sharply reduces the rate at which costly new Federal regulations are introduced. The ongoing introduction of costly regulations had previously been subtracting an additional 0.2 percent per year from real incomes, thereby giving the false impression that the American economy was fundamentally incapable of anything better than slow growth.¹⁶⁴

In touting deregulatory actions and their purported benefits in July 2020, the White House claimed, “President Trump has signed 16 pieces of deregulatory legislation that are expected to result in a \$40 billion increase in annual real incomes.”¹⁶⁵ The administration’s deregulatory actions would save additional billions not entirely captured in the year-end updates on the one-in, two-out process. For example, the White House claimed that the “implementation of the SAFE [Safer Affordable Fuel-Efficient] Vehicles Rule is estimated to increase the real incomes of Americans by \$53 billion per year over the 2021–2029 period.”¹⁶⁶

During the coronavirus outbreak, CEA also estimated the savings from regulatory streamlining related to pandemic recovery:¹⁶⁷

The total value of more widespread adoption of telemedicine would be approximately \$325 billion per year. Reducing FDA approval times by relaxing overly burdensome impediments to drug development would

have a net present value of \$1.9 trillion if approval times are sped up by one year, \$3.9 trillion if sped up by two years, and \$5.9 trillion if sped up by three years. Expanding occupational licensing deregulation for nurse practitioners nationwide could result in \$62 billion in cost savings for patients annually.

Many such changes, including the SAFE Vehicles Rule, are on the Biden administration's chopping block. The CEA approach admits that far greater costs exist than can be attributed to regulation than the annual *Report to Congress* has ever addressed. That perspective would include, for example, greater attention to the ways regulation and infrastructure spending affect not only current jobs, but also entrepreneurs' inclination to create new jobs in the future.

If regulatory liberalizations reduced costs, it is also reasonable to presume that prior increases in regulation added billions of dollars in costs. Massive whole-of-government spending and steering like that of the past three years are also a form of regulation.¹⁶⁸ Even grants and subsidies come with strings attached, as with the paid child-care requirements attached to CHIPS Act subsidies.

The federal bureaucracy, with all the vast resources at its disposal, has not fulfilled its duty to assess the aggregate effects of regulation and intervention in which it engages. The Small Business Administration last published an assessment of the federal regulatory apparatus in 2010. It estimated 2008 regulatory compliance costs at \$1.75 trillion. That discontinued report was never replaced.

The primary purpose of the Small Business Administration report series was never to give an aggregate cost estimate, but to focus on regulatory burdens on small firms, which suffer higher per-employee regulatory costs than larger ones. Rival official aggregate assessments from OMB and the Government Accountability Office dating back to around the turn of the 21st century also found aggregate annual costs in the hundreds of bil-

lions of dollars, some in excess of \$1 trillion in the 2013 dollars depicted in Table 2. Such surveys traditionally conveyed regulatory costs in the following categories:

- Economic regulatory costs (for example, market entry restrictions and transfer payments, such as price supports)
- Workplace regulatory costs
- Environmental regulatory costs
- Paperwork costs

All of these categories have increased since these surveys were done. Private entities have attempted to quantify regulatory costs as well. In a 2014 report, the National Association of Manufacturers (NAM) tallied 2012 total annual regulatory costs in the economy of \$2.028 trillion (in 2014 dollars).¹⁶⁹ Unsurprisingly, the NAM report was criticized by progressive academics and consultants for agencies.¹⁷⁰ The NAM report found average annual per-employee regulatory costs to firms to be \$9,991, but to vary by firm size in a way that hurt small businesses.¹⁷¹ The smaller the firm, the larger the per-employee regulatory costs.

As shown in Table 3, NAM found that per-employee regulatory costs for firms with fewer than 50 workers can be 29 percent greater than those for larger firms—\$11,724 for smaller firms, compared with \$9,083 for larger ones.¹⁷² These figures have not been updated in some time, but the fact that regulation can more heavily fall on small businesses highlights the urgent need for reform.

Academics have also weighed in. A report from 2013 by economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University investigated the long-term reduction in economic growth caused by decades of cumulative opportunity costs imposed by economic regulation, positing dozens of trillions of dollars in lost gross domestic product (GDP) annually. The authors contended that rules affecting growth rates compound and that Americans are less than half as rich as they would be in the absence of much of the regulatory state.¹⁷³

**Table 2. Assessments of Federal Regulation:
Late 20th Century, Early 21st Century (millions of dollars)**

	Hopkins 1992 (1991 dollars)	Government Account- ability Office 1995 (1995 dollars)	Hopkins 1995 (1995 dollars)	Small Business Admini- stration 2001 (2001 dollars)	Office of Manage- ment and Budget 2002 (2001 dollars)	Small Business Admini- stration 2005 (2004 dollars)	Small Business Admini- stration 2010	National Association of Manufac- turers 2014 (2012 dollars)
Environmental	115		168	197	203	221	281	330
Other Social	36		55		30			
Transportation					22			
Labor					22			
Economic Regulation						591	1,236	1,448
Efficiency	73		80		150			
Transfers	130		147		337			
Efficiency— Domestic				101				
Transfers— Domestic				202				
Efficiency— International Trade				44				
Transfers— International Trade				88				
Workplace and Homeland Security				82		106	75	92
Paperwork/ Process/Info Collection (tax compliance)	189		218	129	190	195	160	159
Totals:	543	647	668	843	954	1,113	1,752	2,029
Legacy totals, in 2013 dollars		1,019.03	1,052.10	1,142.27	1,292.67			

Sources: Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps," report prepared for the Regulatory Information Service Center, Washington, DC, August 1992, <http://www.thecre.com/pdf/COST%20OF%20REGULATION%20FILLING%20THE%20GAPS.pdf>; General Accounting Office, Briefing Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, "Regulatory Reform: Information on Costs, Cost Effectiveness, and Mandated Deadlines for Regulations," (GAO/PEMD 95 18BR), March 1995, <http://archive.gao.gov/t2pbat1/153774.pdf>; Thomas D. Hopkins, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, DC, October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html; Office of Management and Budget, "Draft Report to Congress on the Costs and Benefits of Federal Regulations," Federal Register, March 28, 2002, p. 15037–8, <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/cbreport.pdf>; W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>; W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract no. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>; Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>; Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advocacy/7540/49291>; and W. Mark Crain and Nicole V. Crain, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," National Association of Manufacturers, September 10, 2014, <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>. Some figures here are adjusted to 2016 by the change in the consumer price index between 2001 and 2016 and between 1995 and 2016, derived from "CPI Detailed Report Data for January 2017," Bureau of Labor Statistics, Washington, DC (Table 24. Historical Consumer Price Index for All Urban Consumers—CPI-U), <https://www.bls.gov/cpi/cpid1701.pdf>.

Box 2. Unmeasured Costs of the Administrative State

I. Unmeasured Costs of Shortcomings in Administrative Procedure Act Oversight

A. Rule Cost Categories Prone to Escaping Measurement and Disclosure¹⁷⁴

- Costs of economically significant rules that agencies never classify as economically significant
- Costs of independent agency regulations
- Costs of unfunded mandates on states and localities
- Costs of interpretive rules and guidance documents
- Indirect costs
- Job costs of regulation

B. Process/Oversight Shortcomings Generating Unknown Financial and Societal Costs¹⁷⁵

- Costs of abandonment of formal rulemaking
- Costs of agencies' failure to issue a notice of proposed rulemaking for a significant portion of rules
- Costs of agency-gamed notice-and-comment processes
- Costs of agencies' undermining the Congressional Review Act by failing to submit final rules to Congress and to the Government Accountability Office for consideration
- Costs of baked-in pro-regulatory bias
- Costs of economically disruptive policy uncertainty
- Costs of regulation by sue-and-settle agreements
- Costs of regulatory accumulation
- Costs of differential effects of rules on businesses

II. Unmeasured Costs of the Loss of Liberty¹⁷⁶

- Costs of regulatory takings and property value destruction¹⁷⁷
- Costs of abandoning negative rights for a positive rights framework that treats citizens unequally under the law¹⁷⁸
- Costs of delegation of lawmaking power to the executive branch and to unelected administrators¹⁷⁹
- Costs of lack of agency accountability to Congress through agency self-funding¹⁸⁰
- Costs of normalizing dependency
- Costs of imposing regulation based on secret or creatively leveraged data¹⁸¹
- Costs of abandoned federalism¹⁸²

- Costs of overcriminalization¹⁸³
- Costs of loss of anonymity owing to state surveillance¹⁸⁴

III. Costs of Spending and Legislative Programs with Sweeping Regulatory Effect

- Costs of top-down national plans, agendas, and treaties¹⁸⁵
- Costs of distortions created by ordinary federal spending, subsidies, and stimulus¹⁸⁶
- Costs of deadweight effects of federal spending¹⁸⁷
- Costs of government spending to steer investment in science and technology

IV. Costs of the Derailment of Market Institutions

- Costs of the presumption of agency expertise¹⁸⁸
- Costs of disregard of government failure
- Costs of interference with price, distribution, and access mechanisms
- Costs of antitrust regulation and the institutionalization of raising competitors' costs¹⁸⁹
- Costs of blurring corporate and government roles with government-sponsored enterprises and public-private partnerships¹⁹⁰
- Costs of government steering by direct ownership or control of resources¹⁹¹
- Costs of eroded property rights
- Costs of regulatory public utility, siloed-infrastructure models
- Costs of top-down approaches to environmental amenities and concerns¹⁹²
- Costs of permission-seeking and excessive occupational licensing
- Costs of cronyism through rent-seeking¹⁹³
- Costs of permanent bureaucracy¹⁹⁴

V. Costs of Lethality

- Costs of the precautionary principle and the derailment of normal evolutionary risk-management innovation
- Costs of selective expression of benefits
- Costs of wealth and health loss induced by regulation
- Health costs of rent-seeking
- Costs of undermining markets in information

A 2016 report by the Mercatus Center at George Mason University used a micro-economic model to determine “how much regulation distorts the investment decisions of firms and thus hampers long-run economic growth.” Using a 22-industry data set covering 1977 through 2012, the report concluded that, had regulatory burdens remained constant since 1980, the 2012 U.S. economy would have been 25 percent larger. Put another way, the 2012 U.S. economy was

\$4 trillion smaller than it would have been in the absence of cumulative regulatory growth since 1980.¹⁹⁵ That represents a loss in real income of approximately \$13,000 per American per year.¹⁹⁶ Seemingly inconsequential regulations accumulate and generate unintended effects and costs that ought not be ignored.¹⁹⁷

Box 2 illustrates a wide range of regulatory and administrative state interventions that generally go unacknowledged.¹⁹⁸

Table 3. Regulatory Costs in Small, Medium, and Large Firms, 2012

	Cost per Employee for All Business Types			
	All Firms	< 50 Employees	50–99 Employees	> 100 Employees
All Federal Regulations	\$9,991	\$11,724	\$10,664	\$9,083
Economic	\$6,381	\$5,662	\$7,464	\$6,728
Environmental	\$1,889	\$3,574	\$1,338	\$1,014
Tax Compliance	\$960	\$1,518	\$1,053	\$694
Occupational/Homeland Security	\$761	\$970	\$809	\$647

Source: W. Mark Crain and Nicole V. Crain, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,” National Association of Manufacturers, September 10, 2014, <https://www.nam.org/wp-content/uploads/2019/05/Federal-Regulation-Full-Study.pdf>.

Just as the economic calculations necessary to enable central economic planning are impossible,¹⁹⁹ so are regulatory costs impossible to calculate.²⁰⁰ Disclosure is an important part of regulatory reform, but an important caveat is that the best possible guess for overall regulatory costs is an “idiosyncratic guesstimate.”²⁰¹ For several years, this report had used a baseline for across-the-board costs of federal regulation intervention of roughly \$1.9 trillion annually, encompassing compliance costs, economic and GDP losses, social costs, and other costs.²⁰²

Given the emergence of the recent 2017 and 2018–2019 OMB *Report(s) to Congress*, an additional \$10.93 billion annually was added for rules since 2016 that have partial quantification of both costs and benefits²⁰³ and another \$14.08 billion for rules that featured only cost analysis.²⁰⁴ That additional \$25.01 billion through FY 2019 brought last year’s total cost estimate to \$1.927 trillion.²⁰⁵

And there it stopped. No official annualized cost estimates from FY 2020 to FY 2023 are available. One can make a conservative estimate for the years 2020–2022 based on the years of annualized costs the government did bother to present, in context with what one knows of overall costs added in recent years. The American Action Forum maintains a Regulation Rodeo database depicting aggregate regulatory costs as well as paperwork costs by year using the agencies’ own cost reporting in their rulemakings.²⁰⁶ These figures are substantial, including costly new

moves on fuel economy and Treasury investment ownership reporting requirements, for example.²⁰⁷ There are 922 rules from the past three fiscal years alone presenting total costs (not annualized costs) of \$333.3 billion according to American Action Forum:

- 2020: 445 rules; \$14.7 billion
- 2021: 283 rules; \$201.5 billion
- 2022: 264 rules; \$117.1 billion

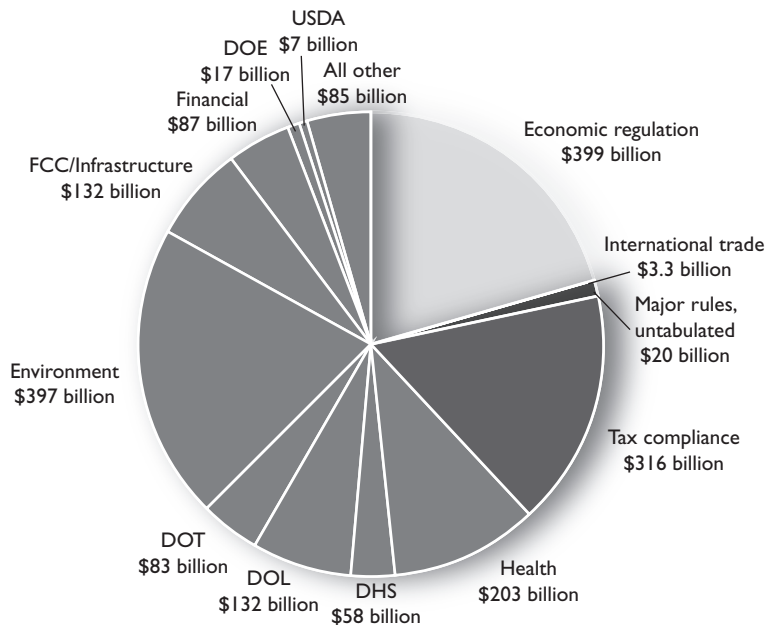
This report noted earlier that, an average of \$8.4 billion in costs were noted by OMB in its not-all-encompassing *Report to Congress* every year for the past 13 years through FY 2019. For the missing three years, this report will employ half that, or \$4 billion annually, which adds \$12 billion in the tentative gross estimate.

Figure 1 presents the updated tally for regulatory intervention of \$1.939 trillion annually. These figures, until OMB releases updated reports, are housed in “All other” in that diagram.

This estimate is based on a nonscientific, disclaimer-laden, amalgam of GDP losses and compliance costs derived from available official data and other accessible sources.²⁰⁸ It recognizes that significant figures are indeterminate not only in the millions and billions place figures, but also in the trillions place figure. This report is not alone in finding itself in this predicament.

The government also cannot round with exactitude on even easier matters, like

Figure I. Annual Cost of Federal Regulation and Intervention, 2023 Estimate, \$1.939 Trillion



Clyde Wayne Crews Jr., *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2017 Edition, available at www.tenthousandcommandments.com, and editions of OMB Reports to Congress on regulatory costs and benefits, <https://www.whitehouse.gov/omb/information-regulatory-affairs/reports>.

DHS = Department of Homeland Security; DOE = Department of Education; DOL = Department of Labor; DOT = Department of Transportation; FCC = Federal Communications Commission; USDA = U.S. Department of Agriculture.

paperwork reduction information as required by the Paperwork Reduction Act. As of January 22, 2023, OMB reported that government-wide totals for “Active Information Collections” imposed a “total annual cost” of \$143,731,031,418 (notice those fantastical significant amounts down to the ones place figure) and take up 10,419,273,111.45 hours.²⁰⁹ One might note with amusement the three-quarters-of-an-hour precision.

This assessment has effectively been stuck at a \$2 trillion undercount for 10 years. A central government nonchalant about \$31 trillion in debt will likely be so regarding off-the-books impositions of the sort that Box 2 begins to capture. This report’s assessments do not capture numerous other categories of costs, such as the costs of antitrust, common-carriage telecom network regulations, federal health care spending, predominance of public–private partnerships in large-scale infrastructure projects,

resource-use restrictions on western lands, a “too big to fail” stance toward large financial institutions, the permanent war economy, surveillance of private citizens, overcriminalization, monopolization of airport security, influence on the housing market and financing, and much more—now including the entire Biden compulsory reset agenda.

There will never be exact agreement on the magnitude of regulatory costs and benefits. Despite the overwhelming difficulty of calculating regulatory cost estimates, it is crucial for policymakers to force OMB to perform comprehensive assessments and to disclose estimated costs of aggregate burdens to the extent possible. In the meantime, subsequent reports from this quarter will incorporate new fiscal years’ partial tallies incrementally, should OMB make them available.

Although escalation of government debt from the COVID-19 pandemic and new mea-

asures like the bipartisan infrastructure bill will show up in federal budget figures, the public faces the great hurdle that other interventions rooted in recent legislation, such as costs of the eviction moratoriums, may never appear in anything presented by OMB.²¹⁰ Costs attributable to the federal government's contribution to inflation and supply-chain disruption are extraordinarily difficult to assess.

Douglas W. Allen of Canada's Simon Fraser University remarked in September 2021, "It is possible that lockdown will go down as one of the greatest peacetime policy failures in modern history."²¹¹ Costly lockdowns are a metaphor for any regulation shrinking the production frontier and well-being, and nothing here captures federal abuse of crisis and the enabling of states that did the same.²¹² After all, some business literature finds mere routine distractions and interruptions in the workplace to cost hundreds of billions each year.²¹³ Post-lockdown, the redirecting of private-sector resources toward government-chosen ends via spending, procurement, and contracting will involve trillions in compounded ripple effects, leading to opportunity costs unlikely to show up in any yearly regulatory assessment like that of OMB.

With respect to the pandemic's effect on GDP estimates in 2021, the U.S. Bureau of Economic Analysis stated, "The full economic effects of the COVID-19 pandemic cannot be quantified in the GDP estimate for the fourth quarter because the impacts are generally embedded in source data and cannot be separately identified."²¹⁴ With its century-plus of neglect and omissions, problems of measuring regulation are worse than those confronting GDP measurement.

Regulatory Cost Burdens Compared with Federal Spending and the Deficit

Comparing regulatory costs with federal taxation and spending helps place the numbers in perspective. According to the newly

released Congressional Budget Office (CBO) *Budget and Economic Outlook*, covering FY 2022 and projections for FY 2023–FY 2033, the U.S. federal government posted \$6.272 trillion in outlays and a deficit of \$1.375 trillion in FY 2022, on revenues of \$4.05 trillion.²¹⁵ Biden calls this the "largest ever decline in the federal deficit."²¹⁶

According to CBO, outlays will cross the \$7 trillion mark by 2026 and will reach just short of \$10 trillion annually by 2033. Deficits persist as far as the eye can see, wobbling up and down a little but still passing \$2 trillion in 2030.

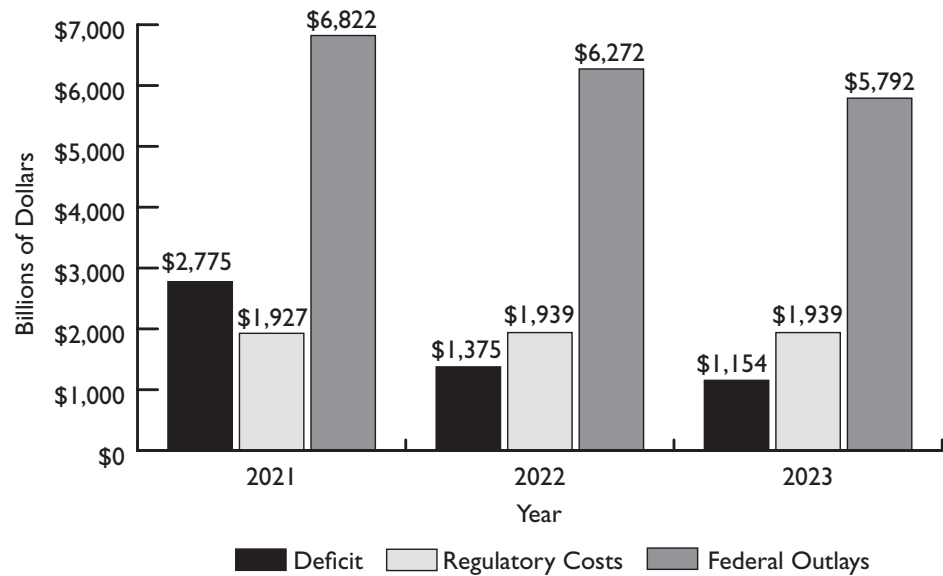
Figure 2 compares deficits and outlays for fiscal years 2021 and 2022, and projected amounts for FY 2023, with regulation. When costs of regulation have tended to hover around 40 percent of outlays in pre-COVID-19 years, the skyrocketing spending of 2020 resulted in costs of regulatory interventions of about 28 percent of budgetary outlays of \$6.822 trillion. Regulation now stands at about 31 percent of outlays and easily exceeds 2022's \$1.375 trillion deficit.

However, while spending and debt are tracked, official measurements to capture likely increased regulatory costs generated by highly regulatory legislative enactments are not prioritized. Unremitting projected deficits can also increase pressure to regulate instead of spend.

Regulatory Costs Compared with Income Taxes and Corporate Profits

This report's regulatory cost estimate is larger than combined individual and corporate income tax receipts in recent years, up until the pandemic spending. For example, in 2020, individual and corporate taxes taken as a whole stood at \$1.8 trillion. With both individual and corporate tax receipts rising while the regulatory estimate has remained largely the same, it was inevitable that tax

Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2021, 2022, and Projected 2023)



Sources: Deficit and outlays and projected outlays from Congressional Budget Office, *The Budget and Economic Outlook*, Table 1-1, “CBO’s Baseline Budget Projections, by Category,” various years, <https://www.cbo.gov>. Deficit and outlays also from White House Office of Management and Budget, Historical Tables, Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–present, <https://www.whitehouse.gov/omb/historical-tables/>. Regulatory cost estimate from Crews, *Tip of the Costberg*.

Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

collections would catch up to the regulatory estimate, pandemic or no.

Income tax collections for individuals that were \$1.6 trillion in FY 2020 have surged to an estimated \$2.26 trillion for FY 2022. The implication is not so much that outstripping is taking place, but rather that regulations are not being measured officially as should be done. Federal activity that is mapped in spending should also be mapped in disclosures of the burdens of regulatory interventions, but is not.

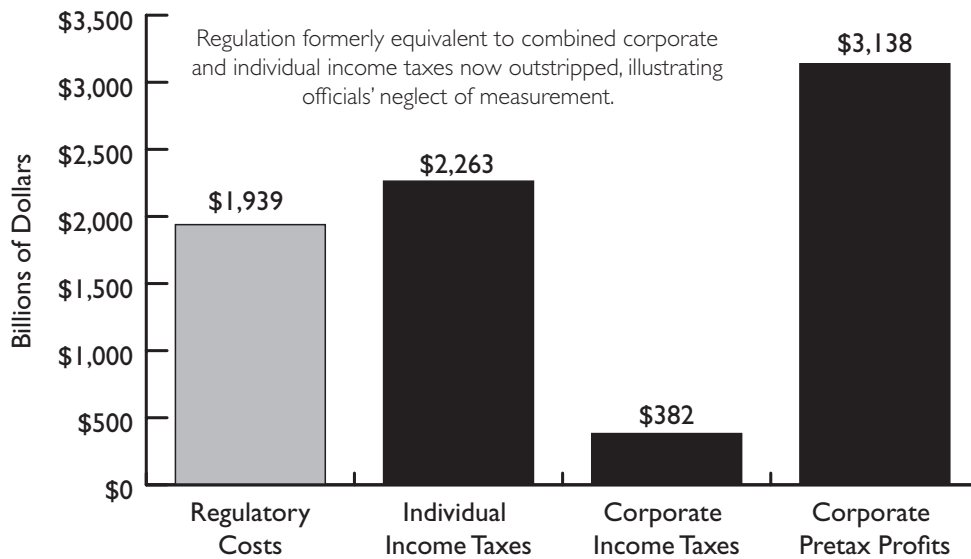
As Figure 3 shows, regulatory costs no longer surpass individual income tax revenues, estimated at \$2.26 trillion for FY 2022.²¹⁷ Corporate income taxes collected by the U.S. government—an estimated \$382 billion for FY 2022—remain dwarfed by regulatory costs but still shot up over \$110 billion over the past two years.²¹⁸ The sum of the two—\$2.64 trillion—now handily tops this report’s regulatory cost estimate of \$1.939 trillion.

Regulatory costs as depicted here not long ago approached the level of pretax corporate profits, which were \$2.4 trillion in 2020. Those profits in 2021 surged to the \$3.1 trillion shown in Figure 3.²¹⁹

Regulatory Costs Compared with U.S. Gross Domestic Product

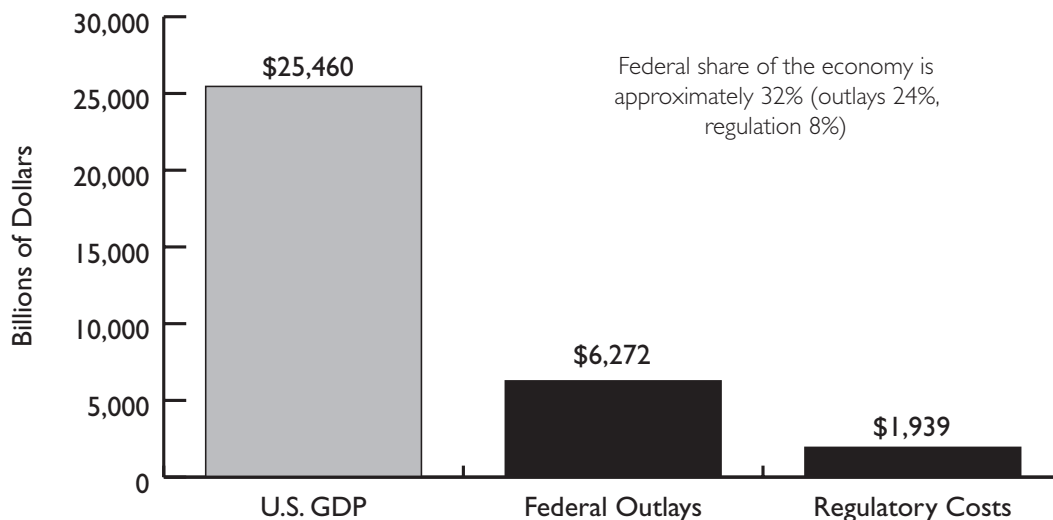
In January 2023, the Commerce Department’s Bureau of Economic Analysis estimated U.S. current-dollar GDP for 2022 at \$25.46 trillion.²²⁰ The total regulatory cost figure of \$1.939 trillion annually is equivalent to approximately 8 percent of that amount. Combining regulatory costs with federal FY 2022 outlays of \$6.272 trillion (see Figure 2), the federal government’s share of the economy stood at some \$8.2 trillion in 2022, or roughly 32 percent of GDP (see Figure 4). None of these metrics include state and local spending and regulation.

Figure 3. Regulatory Compliance Compared with Individual Income Taxes, Corporate Income Taxes, and Corporate Pretax Profits, 2022



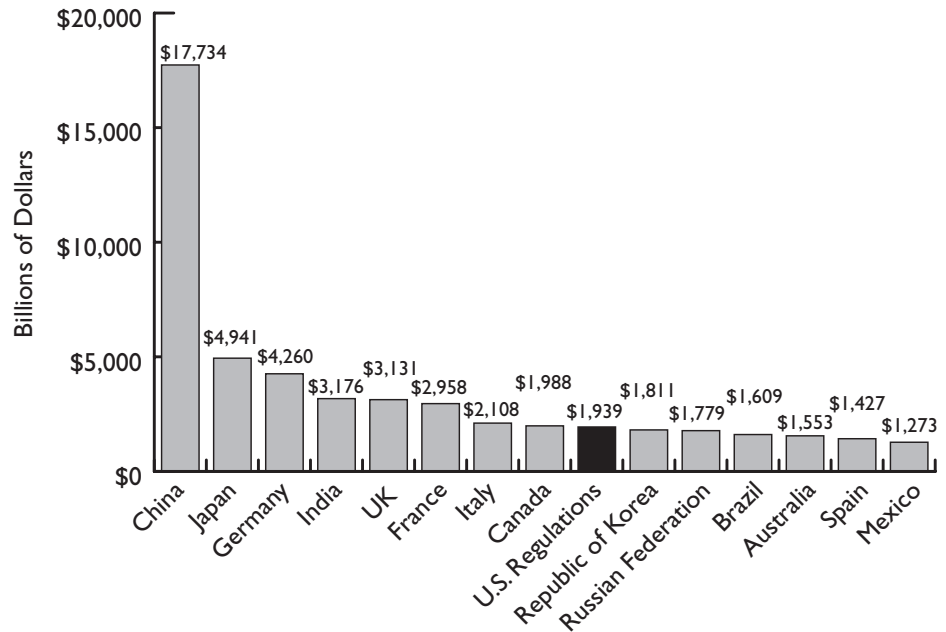
Sources: Regulatory cost estimate from Crews, *Tip of the Costberg* and 2017–2020 editions of OMB Report to Congress on regulatory costs and benefits as compiled by the author in OMB-Tallied Social Regulation Subset, <http://bit.ly/1wpQTrm>, and Annual Costs of Untabulated Major Rules Reviewed at OMB—by Fiscal Year, <http://bit.ly/1sp0UkH>; 2022 estimated tax figures from OMB, Historical Tables, Table 2.1, “Receipts by Source,” <https://www.whitehouse.gov/omb/historical-tables/>; 2021 Corporate pretax profits (domestic and international) from Bureau of Economic Analysis, National Income and Product Accounts Tables, Table 6.17D, “Corporate Profits before Tax by Industry.”

Figure 4. Estimated GDP in 2022 Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg* and 2017–2020 editions of OMB Report to Congress on regulatory costs and benefits as compiled by the author in OMB-Tallied Social Regulation Subset, <http://bit.ly/1wpQTrm>, and Annual Costs of Untabulated Major Rules Reviewed at OMB—by Fiscal Year, <http://bit.ly/1sp0UkH>. GDP from U.S. Department of Commerce, Bureau of Economic Analysis. Outlays from Congressional Budget Office and White House Office of Management and Budget.

Figure 5. U.S. Regulatory Costs Compared to 2021 Gross Domestic Product of the World's Largest Economies



Sources: Crews, *Tip of the Costberg*. Gross Domestic Product data from World Bank, Washington, DC, GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries> and <https://databank.worldbank.org/data/download/GDP.pdf>.

U.S. 2021 GDP of \$23,315 trillion per World Bank not shown.

U.S. Regulation Compared with Some of the World's Largest and Freest Economies

U.S. regulatory costs fall just short of Canada's 2021 GDP, at \$1.988 trillion, and surpass Mexico's \$1.273 trillion. If U.S. regulatory costs of \$1.939 trillion were a country, it would be the world's ninth-largest economy, ranking behind Canada and ahead of the Republic of Korea (see Figure 5).²²¹

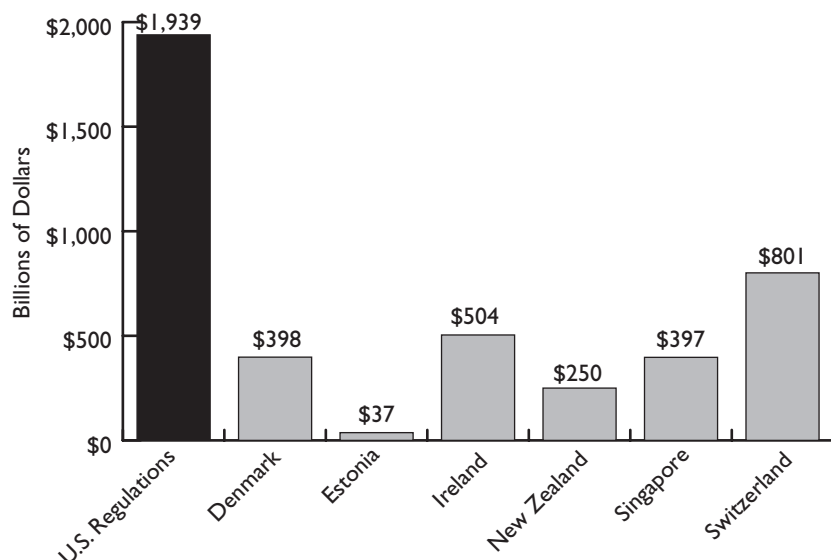
The U.S. regulatory figure of \$1.939 trillion not only exceeds the output of many of the world's major economies, but also greatly outstrips even those ranked as the freest economically by two prominent annual surveys of global economic liberty. Figure 6 depicts the 2021 GDPs of the six nations ranked in the top 10 in both the Heritage Foundation Index of Economic Freedom and the Fraser Institute/Cato Institute *Economic Freedom of the*

World report. The Fraser/Cato index ranks the United States 7th, whereas the Heritage report ranks the United States 25th, a drop from the 20th spot of a year ago.²²²

Regulation: A Hidden Tax on the Household Budget

Taxes can seem more immediate and present than regulation. Taxes are itemized on pay stubs, whereas most regulatory costs are baked into prices, without separate charges on receipts. Regulations are more hidden. Many regulations have opportunity costs, which are invisible and impossible to calculate. They can affect households directly or indirectly, such as when businesses will pass some regulatory costs on to consumers just as they do the corporate tax.²²³ Other costs of regulation will find their way to workers and investors. Many consumers are also workers and owners through their stock and mutual fund holdings.

Figure 6. U.S. Regulatory Load Compared to 2021 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, *Tip of the Costberg*. Gross Domestic Product data from World Bank, Washington, DC, GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>.

“Free” economies consist of those in the top 10 of both the Heritage Foundation/*Wall Street Journal* Index of Economic Freedom and the Fraser Institute/Cato Institute *Economic Freedom of the World* reports.

There is no way to know the true incidence of regulatory costs. But by assuming a full pass-through of all regulatory costs to consumers, one can look at American households’ share of regulatory costs and compare it with total annual expenditures, which are compiled by the Department of Labor’s Bureau of Labor Statistics.²²⁴

For America’s 133.6 million households, the average 2021 pretax income was \$87,432 (over the prior year’s \$84,352).²²⁵ If one were to allocate annual regulatory costs, assuming the full pass-through of costs to consumers, U.S. households “pay” \$14,514 annually in embedded regulatory costs (\$1.939 trillion in regulation divided by 133,595,000 consumer units), or 17 percent of an average income before taxes, and of course more as a share of after-tax income.

This hidden regulatory tax exceeds every annual household budgetary expenditure item except housing (see Figure 7). Regulatory costs amount to up to 22 percent of the typical household’s expenditure budget of \$66,928. That expense budget represents a

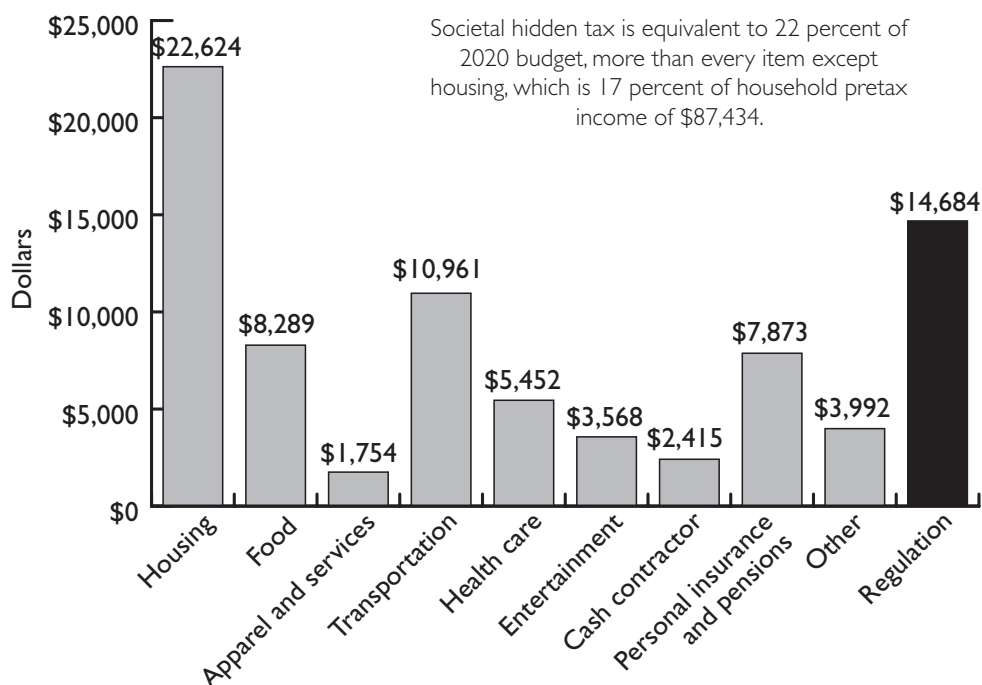
major jump for 2021 over the \$61,334 of a year earlier, greater percentage-wise than the jump in income, and presumably reflecting inflation. The average U.S. household spends more on hidden regulation than on health care, food, transportation, entertainment, apparel, services, or savings. Recall here that this report is imputing only a tiny increase in a compliance and intervention that has gone largely unchanged in the past decade, even as taxes, deficits, the debt, incomes, and expenses have all increased.

A small piece of regulatory costs is not hidden. Consumers pay for regulatory agencies and administration budgets more directly through taxes, as described in the next section.

Administrative and Enforcement Costs of Regulation

Regulatory cost estimates inadequately capture compliance, deadweight, and other costs experienced by the public. But administrative costs do get captured. These

Figure 7. U.S. Household Expense Budget of \$66,928 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics (BLS); author calculations.

Proxy for households here is BLS depiction of 131,234,000 “consumer units,” which comprise “families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.” Other consists of “personal care products and services,” “education,” and “all other expenditures.”

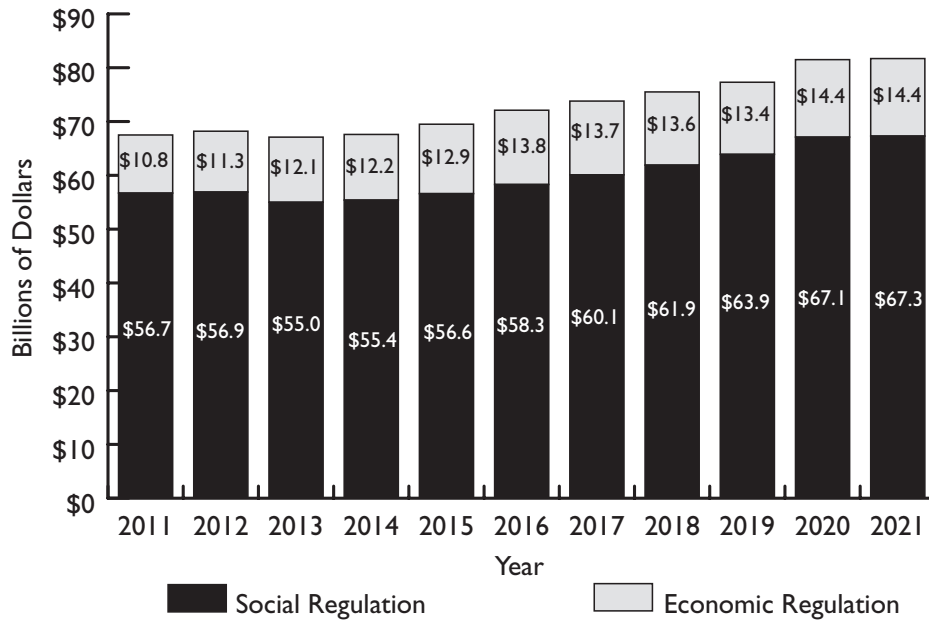
are the on-budget amounts federal agencies spend to issue and enforce rules. The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, DC, examine presidents’ annual budget proposals to compile the administrative costs of developing and enforcing rules.

According to the latest compilation, estimated FY 2021 enforcement costs incurred by federal departments and agencies stood at almost \$82 billion (in constant 2021 dollars, here adjusted from original 2012 dollars) (Figure 8).²²⁶ Of that amount, \$14.4 billion was incurred on administering economic regulations. The largest amount, spent on writing and enforcing social and environmental regulations, was \$67.3 billion. The \$82 billion in regulatory agency enforcement costs helps envision the ad-

ministrative apparatus, as these costs come on top of other estimates of regulatory compliance and economic burdens. In current dollars, the Environmental Protection Agency alone spent an estimated \$5.236 billion in this category in 2021, accounting for over 6 percent of total reckoning of expenditures by all regulatory agencies.²²⁷ EPA formerly accounted for the lion’s share of government administration and enforcement costs, but the Department of Homeland Security’s costs, at an estimated \$39.7 billion, now account for 48 percent.²²⁸

The Weidenbaum Center and the Regulatory Studies Center also estimate the number of full-time-equivalent administrative and enforcement staff at 288,409 in FY 2021. The number of federal employees has increased by more than 100,000 since 2001, when staffing was 173,057.²²⁹ Much of the post-2001 surge may be attributable to the

Figure 8. Federal Agency Administrative and Enforcement Budgets, \$82 Billion Total in FY 2021



Source: Annual “Regulators’ Budget” Series, published jointly by the Regulatory Studies Center at The George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy.

Original 2012 constant dollars are adjusted here by the change in the consumer price index between 2012 and 2020, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, DC. All Urban Consumers (CPI-U), U.S. city average, all items.

then-newly created Transportation Security Administration’s hiring of thousands of airport screening personnel. Policymakers might take interest in metrics like government employees per capita²³⁰ and contractors per capita.

Costs are one way to attempt to capture the size and scope of the federal regulatory enterprise. Another is to assess the production of paper—the regulatory material that agencies publish each year in sources like the *Federal Register*.

Page Counts and Numbers of Rules in the *Federal Register*

The *Federal Register* is the daily repository of all proposed and final federal rules and regulations.²³¹ Although its number of pages is often cited as a measure of regulation's scope, there are shortcomings with relying on page counts as a metric. A short rule may be costly, whereas a lengthy one may be relatively cheap. The *Federal Register* also contains many administrative notices, corrections, rules relating to the governance of federal programs and budgets, presidential statements, and other material. These all contribute bulk and bear some relation to the flow of regulation, but are not strictly regulations. Blank pages, skips, and corrections also affect page counts. In previous decades, blank pages numbered in the thousands owing to the Government Publishing Office's imperfect estimation of the number of pages that agencies would require for publishing rules. These days, it is typically a few hundred pages per year.

Although the *Federal Register* has always been the primary document for cataloging regulations, it has recently under Trump chronicled their partial reduction, although a look at the daily *Federal Register* may not have given that impression. Reducing regulations requires writing rules too, which can continue to expand the *Federal Register*. Shortcomings notwithstanding, it is worthwhile to track the *Federal Register*'s page counts, particularly because under the Biden administration, offsetting deregulatory rules are no longer part of the bulk.

Federal Register Pages Back above 80,000

Joe Biden has restored the 80,000-page *Federal Register* as the norm. On Decem-

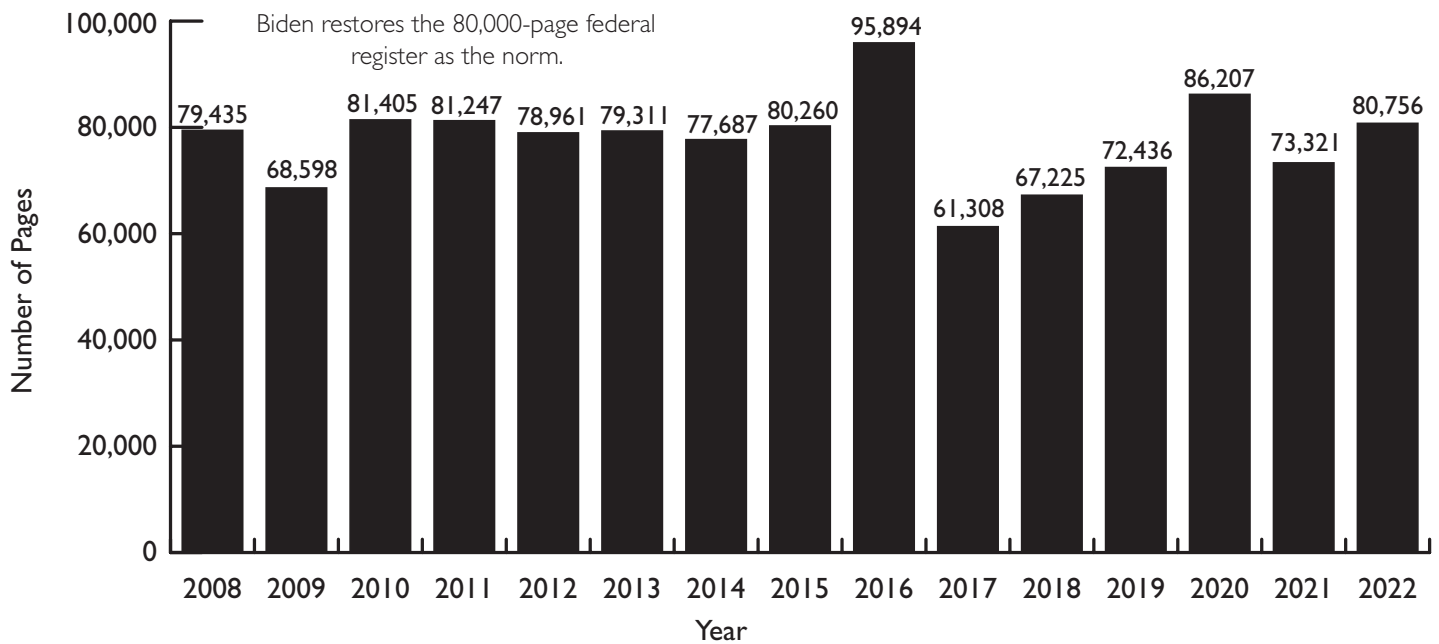
ber 30, 2022, the *Federal Register* closed out at 80,756 pages (up 10 percent from 73,321 at the end of Biden's first year), a figure that will adjust downward slightly by a few hundred pages in the final National Archives reckoning and be taken into account later.²³²

One can compare Biden's tally with two extremes, high and low. At the end of 2016, Obama's final calendar year, the number of *Federal Register* pages stood at 95,894, which at the time was the highest level in the history of the *Federal Register*. Conversely, the first calendar year of the Trump administration finished with 61,308 pages in the *Federal Register* (see Figure 9). The last time the annual page count had been that low was in 1993, at 61,166 pages, during the Clinton administration. By the time Trump was inaugurated on January 20, 2017, the Obama administration had already added 7,630 pages to the *Federal Register*, putting Trump's "net" page count at 53,678.²³³

Trump's page count rose after 2017, however. His 2020 *Federal Register* tally of 86,207 pages stood 41 percent above his first-year count, representing the second-highest count of all time (10 percent below Obama's record). Some of that bulk was attributable to Trump's one-rule-in, two-rules-out program and rewrites of major rules, illustrating the shortcomings of using page numbers as a metric for regulation. To eliminate a rule, agencies need to overwrite it with another rule, which adds pages even as it subtracts regulatory burdens.

Of the 10 all-time high *Federal Register* page counts, five occurred during the Obama administration. While still 15 percent below

Figure 9. Number of *Federal Register* Pages, 2008–2022



Source: National Archives and Records Administration, Office of the Federal Register.

Obama’s 2016 all-time record, Biden’s preliminary 2022 count of 80,756 is the fifth-highest ever with at least two years to go. Figure 9 shows Biden to be just shy of the prior all-time record years of 2010 and 2011, at 81,405 and 81,247, respectively.

A drop in page counts between administrations is typical, as new presidents freeze the pipeline temporarily and launch their own priorities. Figure 9 shows a 15 percent drop between Trump and Biden, which was even more significant than it appears here, because 6,242 pages between January 1, 2021, and Biden’s inauguration on January 20 belonged to Trump (making Biden’s decrease 22 percent). Trump’s 2017 drop was particularly notable at 36 percent below the Obama record. The last time a drop in *Federal Register* page counts of that magnitude happened was when Ronald Reagan reduced the count from Jimmy Carter’s 73,258 in 1980 to 44,812 by 1986, but that 28,446-page drop took five years to materialize.²³⁴ (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

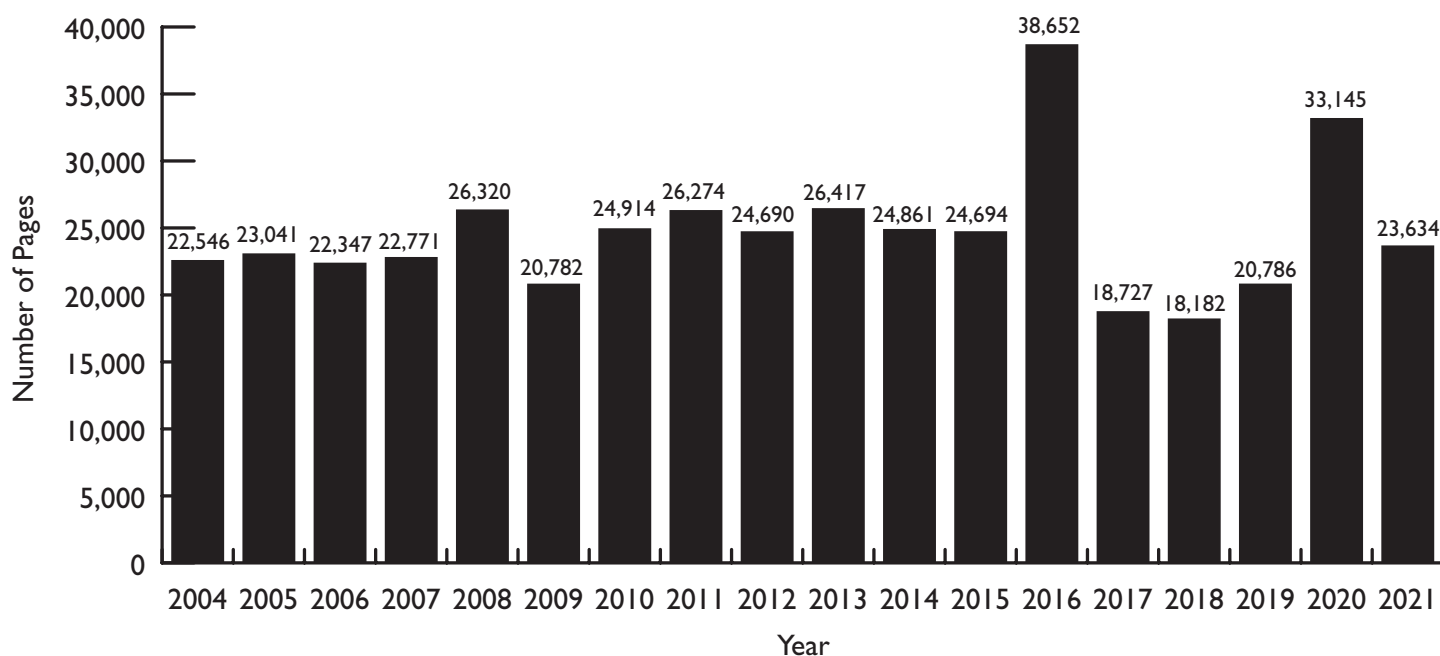
***Federal Register* Pages Devoted to Final Rules**

Isolating the pages devoted to *final* rules might be more informative than gross page counts, because doing so omits pages dedicated to proposed rules, agency notices, corrections, and presidential documents (although those can also have regulatory effects).

The number of pages devoted to final rules from Biden’s second year is not available as of this writing, but his first year ended with 23,634 pages devoted to final rules, nearly a 29 percent drop from Trump (see Figure 10).

Trump delivered the extremes here, with his 18,182 pages devoted to final rules in 2018 marking the lowest count since 1992. In contrast, Trump’s final year set the second-highest page count of all time at 33,145. Some rules are bulkier than others with regard to page counts. Trump’s streamlining-oriented Safer Affordable Fuel-Efficient, or SAFE, Vehicles Rule for Model Years 2021–2026, for example

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2004–2021



Source: National Archives and Records Administration, Office of the Federal Register.

(targeted by Biden), clocked in at 1,105 pages.²³⁵ As will be seen, Biden’s 2021 rule count was the highest since 1999.

The 59 percent jump by Trump between 2019 and 2020 and the 56 percent surge between 2015 to 2016 under Obama stand out in Figure 10. Obama’s 2016 peak shattered 2013’s then record high of 26,417 by 46 percent. The bursts under both Obama and Trump are consistent with the longstanding bipartisan midnight rule tradition, which in Trump’s case may have been partially de-regulatory. The drop of 51 percent between Obama and Trump compares with the 29 percent drop between Trump and Biden.

Although more pertinent measures than page counts of final rules can account for actual effects or burdens, for page counts to drop so steeply between administrations, or to jump at transition time, is noteworthy.

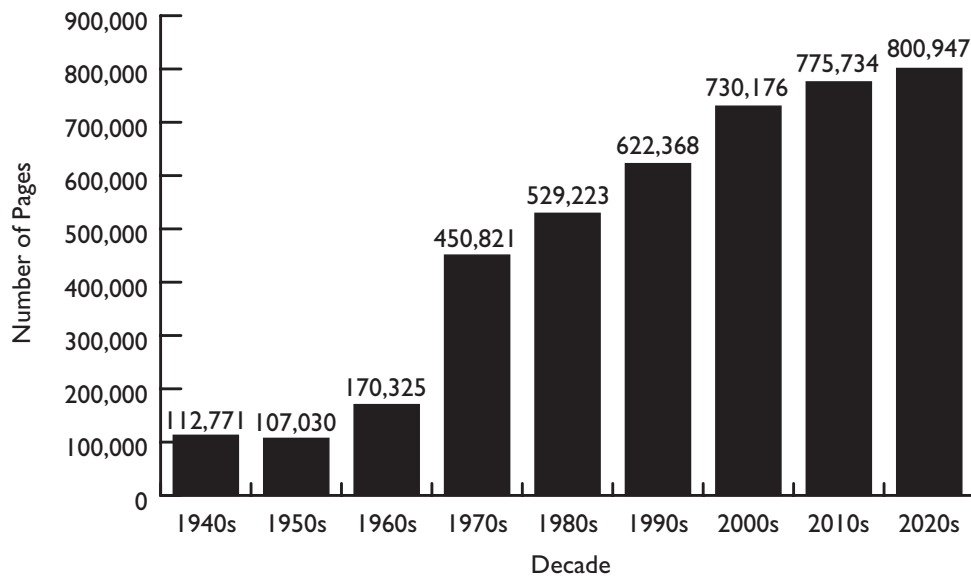
The pages of proposed rules in the regulatory pipeline are also relevant to future regulatory costs. These may or may not be a leading indicator heralding growth or decline in the

number of future final rules. Although not depicted here, the number of pages devoted to proposed rules peaked at 23,193 in 2011 under Obama, whose page count of proposed rules was 21,457 in 2016. Under Trump, *Federal Register* pages devoted to proposed rules in 2017 cratered to 10,892—half the level of Obama’s concluding years and the lowest since 1981. These rose to 17,246 in 2018. In both of Trump’s final two years, the number of *Federal Register* pages devoted to proposed rules stood above 19,000. For comparison, all Obama years, apart from the first, exceeded 20,000.

***Federal Register* Pages Published by Decade**

Still another way of looking at *Federal Register* big-picture trends is by pages per decade (see Figure 11). Nearly a million pages are likely to be published in the 2020s. Despite Trump-era rule reductions starting off the decade, a hefty jump over the 2010s is apparent. The second-to-last bar of Figure 11 shows that the just-ended decade of

Figure 11. *Federal Register* Pages per Decade
800,947 Pages Currently Published in the 2020s



Source: National Archives and Records Administration, Office of the Federal Register.

Trump's final year and Biden's first two average 80,095 pages, anticipating 800,947 pages in the "Regulatory Roaring 20s."

the 2010s saw 775,734 new *Federal Register* pages, for an average of 77,573 pages added per year. That's a jump over the average of 73,018 pages per year during the 2000s.

Trump's final year and Biden's first two years of *Federal Register* pages average 80,095 pages per year for the current decade. Figure 11 extrapolates that number for the rest of the 2020s and shows an expected pace of 800,947 pages in the current decade. The new pro-regulatory environment reflected in Biden's "Modernizing Regulatory Review" directive,²³⁶ climate crisis campaign,²³⁷ and Inflation Reduction Act–related spending and regulation may well push the decadal point to 1 million pages.

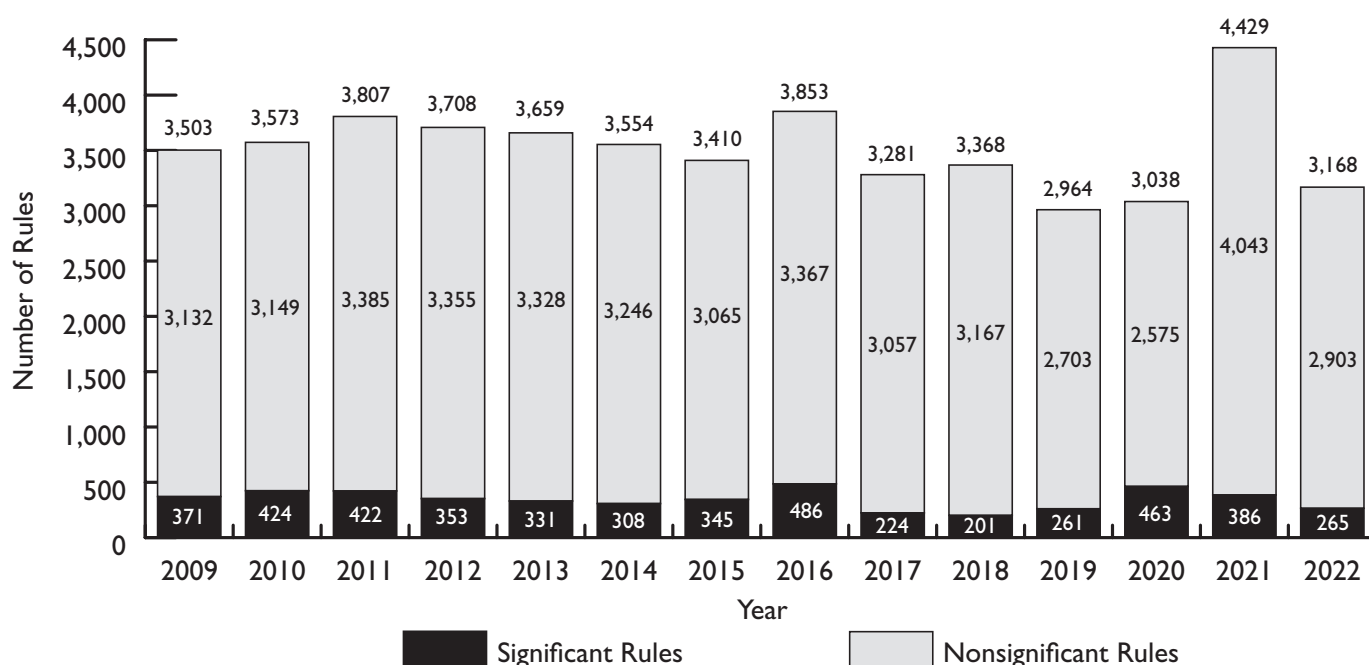
Number of Final (and Significant Final) Rules in the *Federal Register*

Although rule counts are an important gauge of regulation, and surely superior to page counts, even they are becoming less definitive as guidance documents, and subregulatory

pen-and-phone decrees substitute for formal rulemaking. The 80,756 pages in the *Federal Register* in 2022 yielded 3,168 final rules, of which 265 were deemed significant. One of the lowest levels ever, even with Biden at the helm (see Figure 12), it marks a 13 percent decline from the 4,429 rules Biden apparently produced in 2021. That tally, if it holds, was the highest since 1999 (compilations at the National Archives sometimes fluctuate, and it would not be a surprise to see this figure change after additional reconciliations²³⁸).

For some context, despite Trump's near-record 2020 *Federal Register*, his administration managed to reduce the annual number of rulemakings in each of its four years to the lowest levels recorded since modern record-keeping began in the 1970s, even with deregulatory regulations in the gross totals. Even with Trump's record 86,207 *Federal Register* page count upon exit, his 3,038-rule tally was lower than every other president since the 1970s. Biden's newest count is also among the record low, but it is seemingly offset by his 2021 high, which is itself offset by a couple hundred final rules (some de-

Figure 12. Number of Final Rules in the *Federal Register*, 2009–2022



Source: Compiled by author using the National Archives. Current-year total final rule tally and all years' significant rule tallies from [FederalRegister.gov](https://www.federalregister.gov) online database, which fluctuates. Prior years' total final rules come from National Archives compilations maintained under "Federal Register Statistics" at <https://www.federalregister.gov/reader-aids/understanding-the-federal-register>.

Trump's rules in 2019 made for the lowest rule count ever seen, and the only count below 3,000 since recordkeeping began in the 1970s.

regulatory) from Trump between New Year's Day and Biden's 2021 inauguration.

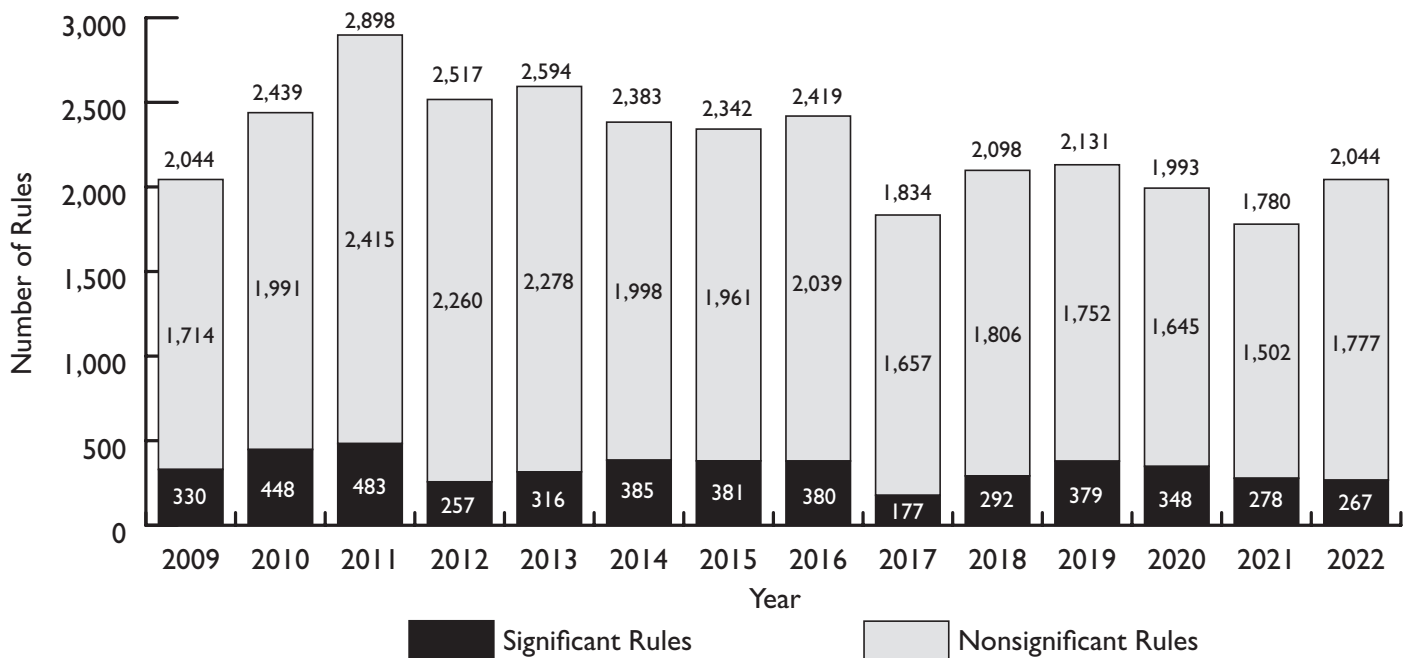
Trump's deregulatory intent was a defining element of his administration's first year or so, and the lower counts stand out in Figure 12. Under Trump, final rules dipped to 3,281 in 2017, the then lowest-ever total. Obama had issued 207 rules in January 2017 before Trump's inauguration, leaving Trump with 3,074 net rules in his first year.²³⁹ In 2016, the final full year of the Obama administration, the number of final rules published in the *Federal Register* reached 3,853. That was the Obama administration's highest total and the highest level since 2005. Both of those totals were exceeded by the Biden 2021 total, but outstrip his apparent 2022 low tide. Trump's 2,964 rules in 2019 made for the lowest rule count ever seen, and the only count below 3,000 since recordkeeping began in the 1970s. Midnight rule flurry and fat *Federal Register* notwithstanding, even Trump's final tally was exceeded by all other presidents as well as successor Biden.

Trump's slowed pace of traditional rulemaking was offset, however, by his affinity for antitrust, trade, tech policy, family leave, and other pursuits that, as is the case with federal consolidations, may not appear as rules in the *Federal Register* at all and are not readily tracked in OMB reviews.

Final rule counts stand well below the levels that prevailed throughout the 1990s, when the annual average was 4,613; final rule counts were even greater in the decades prior. The average for the 2000–2009 period was 3,984. Despite the big 2021 jump, a trend toward fewer but costlier larger rules may be under way,²⁴⁰ perhaps supplemented by subregulatory guidance. Output by department and agency is a useful metric for overseers to monitor closely.

Economically significant regulations are those deemed to impose \$100 million in annual effects. These rules will be addressed in the upcoming discussion of the "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions."²⁴¹ A larger

Figure 13. Number of Proposed Rules in the *Federal Register*, 2009–2022



Source: Compiled by author using *Federal Register*.

subset of the total rules just discussed are deemed significant under Executive Order 12866 and are also depicted in Figure 12.

Among Biden’s 3,168 rules, 265 were significant, compared with 386 the year before. Significant regulations are likely understated, because many major interventions and regulatory pursuits get officially deemed net-beneficial rather than costly, which can turn out to be very far from the truth. As it stands, the highest count of significant rules over the past two decades was in 2016 under Obama. In that year, of 3,853 final rules, 486 were deemed significant (Figure 12). Although the appearance of several hundred significant final rules each year has been common, that changed in the first three years of the Trump administration.

Pre-inauguration overlap weeks aside, Obama’s eight years brought 3,040 significant rules, for an annual average of 380, which exceeds Biden’s two-year average so far of 326. Trump, in contrast, issued a total of 1,149 significant rules, which amounts to an

annual average of 287, of which many were deregulatory. Two-thirds of them occurred in the final midnight rush year.²⁴²

Although the Trump administration’s emphasis was often on significant rules and their removal, such rules were still implemented during his tenure. Yet a lower base level of rulemaking prevailed in those years that will merit ongoing comparison to future administrations.²⁴³

Number of Proposed (and Significant Proposed) Rules in the *Federal Register*

Stopping or slowing incomplete proposed rules in the pipeline is easily done, however. All recent presidents have done so, which is easier than eliminating existing rules.²⁴⁴ Agencies can also opt to use guidance instead of rules to influence policy. With those caveats, Figure 13 surveys proposed rules for recent years.

Significant regulations are likely understated, because many major interventions and regulatory pursuits get officially deemed net-beneficial rather than costly, which can turn out to be very far from the truth.

The year 2022 concluded with 2,044 proposed rules in the *Federal Register*, 15 percent more than Biden's 2021 count of 1,780. Although Biden's final rule count dropped, his proposed rule count increased, which will increase future totals. Biden's proposed rule count has not reattained pre-Trump levels, and so it bears watching in 2023 and 2024. Of those 2,044 proposed rules, 267 were deemed significant, level with 2021.²⁴⁵ Significant proposed rules in the Trump years made up a substantial number of the total proposed, the heights of which were sometimes comparable to those of earlier administrations. But these did not materialize as higher numbers of final regulatory rulings for Trump.²⁴⁶

The drop at presidential transition years is again notable. In Obama's final year of 2016, 2,419 proposed rules appeared in the *Federal Register* (Figure 13). In Trump's first year, that count fell to 1,834, including just over 150 issued by Obama during the first three weeks of 2017. The proposed rule pipeline tally in Trump's first year was the lowest since recordkeeping began in the 1970s, until it was bested by the Biden first-year drop, freeze, and modernization regrouping that reduced the count to 1,780.

Trump's midnight rule activity in 2020 notwithstanding, his proposed rules, which averaged 2,014 annually, never attained the heights of the earlier Obama and George W. Bush years depicted in Figure 13. Indeed, in previous decades, far greater numbers of proposed rules filled the pipeline. The average in the 1990s was 3,164 per year. The average in the 2000s was 2,662 annually (see Appendix: Historical Tables, Part B).

Actions at the prerule stage rather than the proposed stage may be substantial as well.

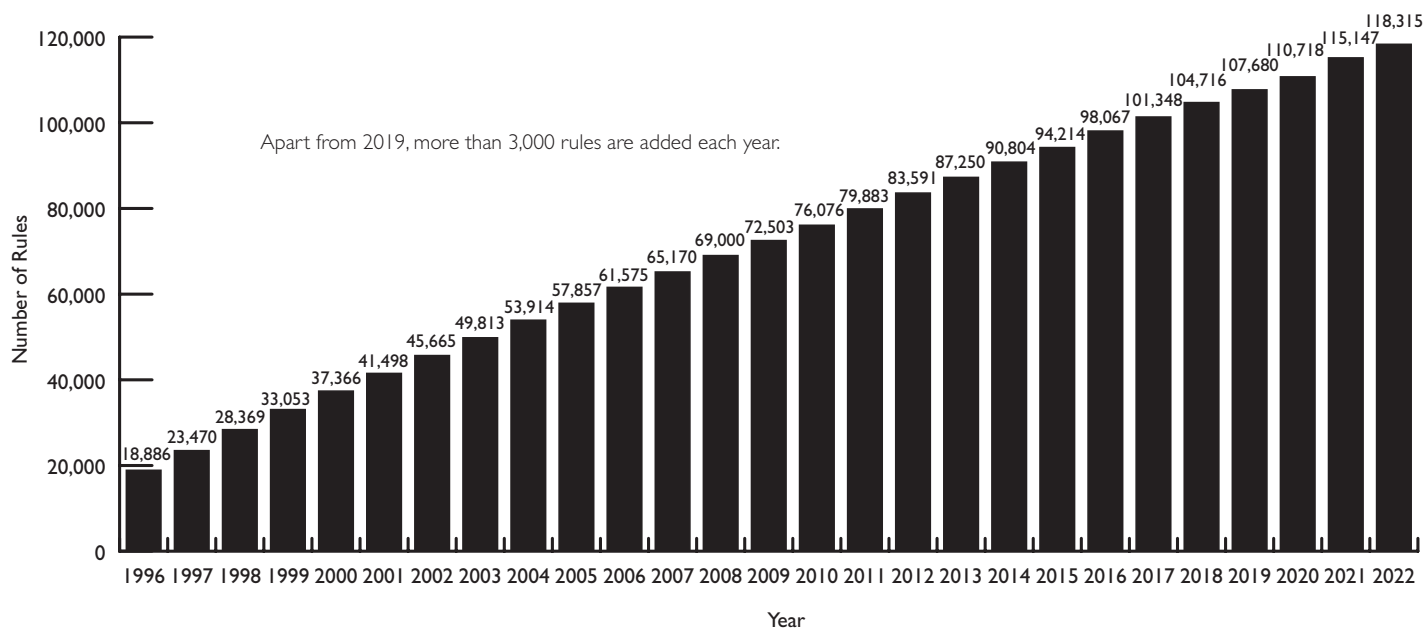
The Heritage Foundation noted the presence in 2021 of dozens of such anticipated rules.²⁴⁷ These reflect the underlying pursuit of progressive aims in the Biden agenda on (a) student debt relief; (b) corporate board diversity; (c) lending disclosures for financial institutions; (d) housing policy; (e) energy efficiency mandates; (f) restrictions on coal, oil, and gas leasing; and (g) other environmental regulations. The later section "Notable Rules and Rulemakings by Agency" surveys some of the rules in play.

Cumulative Final Rules in the *Federal Register*

The annual outflow of over 3,000 final rules (except for Trump's 2,964 rules in 2019) has resulted in 118,315 total new rules from 1993, when the first edition of *Ten Thousand Commandments* was published, through the end of 2022. Since 1976, when the *Federal Register* first began itemizing rules, 215,405 final rules have been issued (see Appendix: Historical Tables, Part B). Since 1996, the year the Congressional Review Act (CRA) was passed, 99,429 rules have been issued (see Figure 14).

Given that flow, the 20 rules repealed thus far by CRA resolutions of disapproval represent 0.02 percent of the total number of rules issued to date since the CRA's enactment. Of 23 resolutions of disapproval introduced in the 117th Congress, including some unsuccessful ones from the GOP related to COVID-19 rollbacks, three passed and were signed by Biden.²⁴⁸ The bulk, 16, were enacted during the Trump administration.

Figure 14. Accumulation of Final Rules Published in the *Federal Register*, 1996–2022



Source: National Archives and Records Administration, Office of the Federal Register.

The Expanding *Code of Federal Regulations*

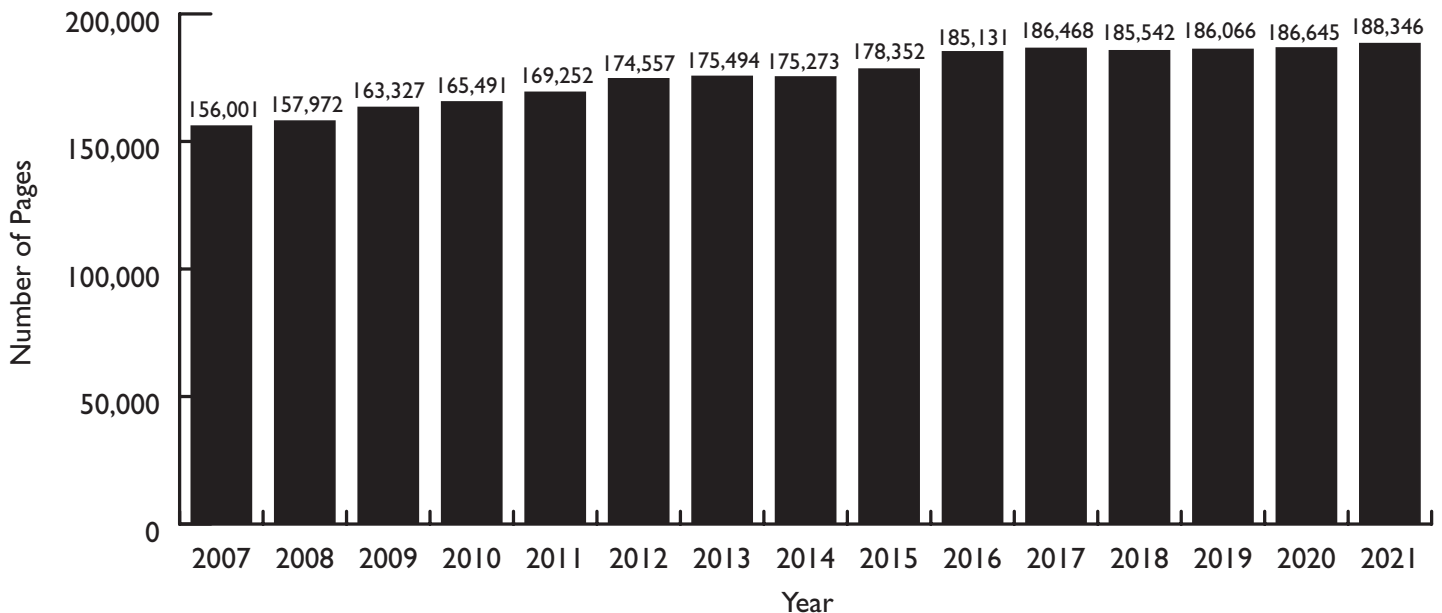
The page count in the *Code of Federal Regulations* (CFR), where the *Register's* rules come to rest in small print, is not as dramatic as the yearly count of tens of thousands of pages in the *Federal Register*. The archive of unelected agency lawmaking is still a sight to behold.

According to the National Archives, in 1960 the CFR contained 22,877 pages. By 1975, that count (including the CFR's index) had surged to 71,224. As of year-end 2021 (the 2022 figures have not been logged yet at the National Archives), the count stood at 188,346, seen in Figure 15. That is a 165 percent increase in the CFR since 1975. In

2008, when George W. Bush left office, the count stood at 157,972.

The number of CFR bound volumes now stands at 243, compared with 133 in 1975. The National Archives makes a special point to note the various colors of bindings since 2010. These have included magenta, teal, and fuchsia. The expansion since George W. Bush, not including Biden's second year, is 19 percent. One can expect the CFR to further expand in the wake of major post-COVID-19 legislation. (For the detailed breakdown of numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.)

Figure 15. *Code of Federal Regulations*, 188,346 Total Pages in 2021, 2007–2021



Source: National Archives and Records Administration, Office of the Federal Register.

The CFR logs permanent rulemakings, just as the *U.S. Code* does for statutes. It still misses many regulations, however. The traditional rules and regulations in the CFR are supplemented by executive actions and numerous forms of subregulatory guidance documents with no fixed resting place on the CFR bookshelf that the public can access. Biden made the problem worse by

overturning Trump's 2020 Executive Order 13981, "Promoting the Rule of Law through Improved Agency Guidance Documents," which had begun the process of creating a public repository for guidance documents. The report next discusses such "regulatory dark matter" and the need to subject it to discipline through tracking.

The Presidential Dimension of Regulatory Dark Matter: Executive Orders and Memoranda

Executive orders, presidential memoranda, presidential directives,²⁴⁹ ersatz fact sheets of recent administrations, and other executive proclamations make up a substantial component of what has replaced much actual law-making in today's United States.

Although executive orders and actions ostensibly deal with the internal workings and operations of the federal government, they increasingly can have binding effect and influence private behavior, which is unlawful.²⁵⁰ Congress should give them more oversight.

Executive orders date back to George Washington's administration.²⁵¹ Since the nation's founding, presidents have issued 15,611 of them (see Table 4). The reporting and numbering of these documents have not

been consistent until recent decades. As for executive orders' durability, presidents have traditionally been presumed to be able to overturn at will those issued by prior administrations.²⁵²

Joe Biden issued 77 executive orders in his first year of 2021, easily the most seen in recent decades, followed by a drop to 29 in 2022 (see Figure 16). Sixteen executive orders issued by Trump in the closing weeks of his term in January 2021 brought the total for that year to 93.²⁵³ Trump had issued 67 executive orders in 2020, a level not seen since 2001 (but which, as a transition year, included 14 Clinton orders and 53 for George W. Bush). Trump also issued 63 executive orders in 2017, 35 in 2018, and 47 in 2019, with oft-stated intent to streamline

Table 4. Executive Orders by Administration

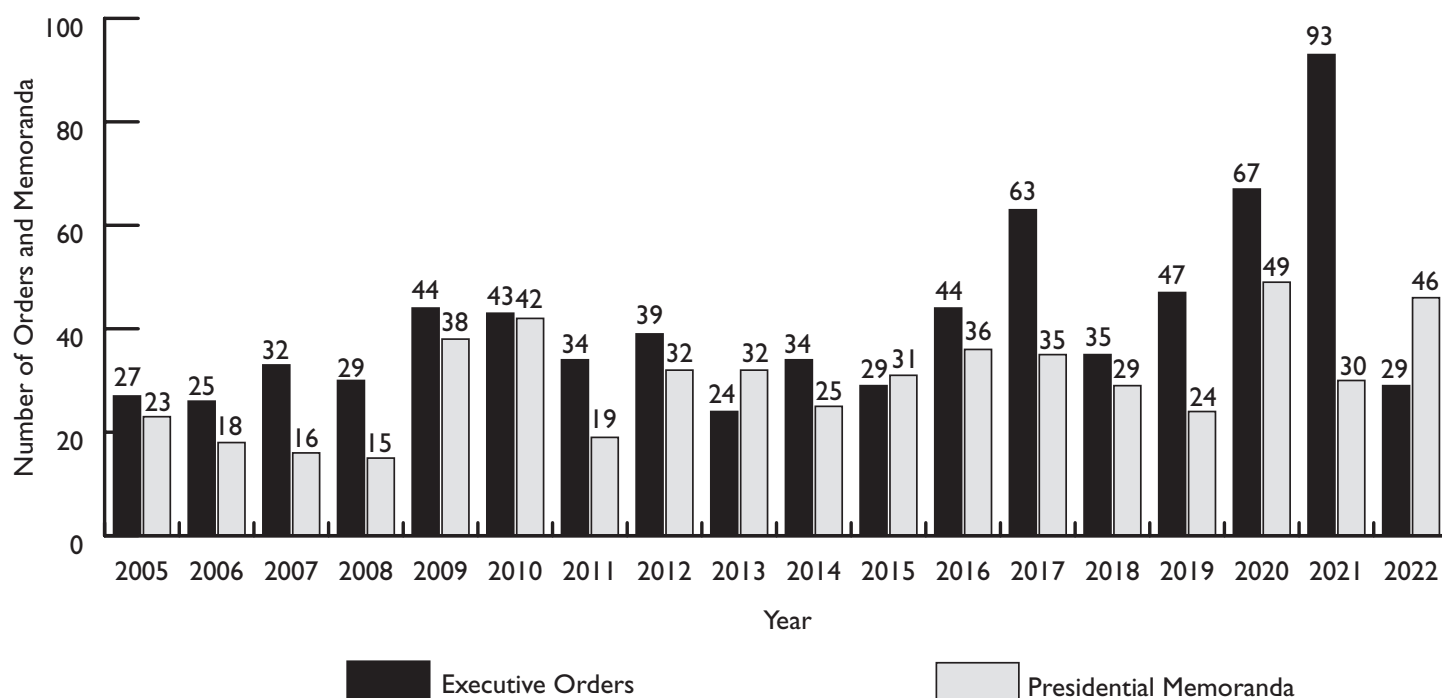
	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
George Washington	n/a	n/a	8
John Adams	n/a	n/a	1
Thomas Jefferson	n/a	n/a	4
James Madison	n/a	n/a	1
James Monroe	n/a	n/a	1
John Quincy Adams	n/a	n/a	3
Andrew Jackson	n/a	n/a	12
Martin van Buren	n/a	n/a	10
William Henry Harrison	n/a	n/a	0
John Tyler	n/a	n/a	17
James K. Polk	n/a	n/a	18
Zachary Taylor	n/a	n/a	5
Millard Fillmore	n/a	n/a	12

	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
Franklin Pierce	n/a	n/a	35
James Buchanan	n/a	n/a	16
Abraham Lincoln	n/a	n/a	48
Andrew Johnson	n/a	n/a	79
Ulysses S. Grant	n/a	n/a	217
Rutherford B. Hayes	n/a	n/a	92
James Garfield	n/a	n/a	6
Chester Arthur	n/a	n/a	96
Grover Cleveland - I	n/a	n/a	113
Benjamin Harrison	n/a	n/a	143
Grover Cleveland - II	n/a	n/a	140
William McKinley	n/a	n/a	185
Theodore Roosevelt	n/a	n/a	1,081
William Howard Taft	n/a	n/a	724
Woodrow Wilson	n/a	n/a	1,803
Warren G. Harding	n/a	n/a	522
Calvin Coolidge	n/a	n/a	1,203
Herbert Hoover	6,070	5,075	996
Franklin D. Roosevelt	9,537	6,071	3,467
Harry S. Truman	10,431	9,538	894
Dwight D. Eisenhower	10,913	10,432	482
John F. Kennedy	11,127	10,914	214
Lyndon B. Johnson	11,451	11,128	324
Richard Nixon	11,797	11,452	346
Gerald R. Ford	11,966	11,798	169
Jimmy Carter	12,286	11,967	320
Ronald Reagan	12,667	12,287	381
George H.W. Bush	12,833	12,668	166
William J. Clinton	13,197	12,834	364
George W. Bush	13,488	13,198	291
Barack Obama	13,764	13,489	276
Donald Trump	13,984	13,765	220
Joe Biden	14,090	13,985	106
Total Number of Executive Orders			15,611

Source: Author's tabulations; Executive Orders Disposition Tables Index, Office of the Federal Register, National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; "Executive Orders," The American Presidency Project, ed. John T. Woolley and Gerhard Peters (Santa Barbara, CA: 1999–2014), <http://www.presidency.ucsb.edu/data/orders.php>.

n/a = not applicable or not available.

Figure 16. Number of Executive Orders and Presidential Memoranda, 2005–2022



Source: National Archives and Records Administration, Office of the Federal Register.

the federal government. Obama's executive order totals were in line with those of other presidents. By the end of their terms, Obama had issued 276 executive orders, compared with George W. Bush's final tally of 291 (see Table 4 for all predecessors).²⁵⁴

Following are most of Biden's 29 executive orders from 2022. In instances such as the bipartisan infrastructure law and the CHIPS Act, Congress has handed substantial law-making and regulatory powers to the executive branch. These powers will likely surface in future presidential decrees.

- Establishing the President's Advisory Council on African Diaspora Engagement in the United States, December 19, 2022
- Lowering Prescription Drug Costs for Americans, October 19, 2022²⁵⁵
- Enhancing Safeguards for United States Signals Intelligence Activities, October 14, 2022²⁵⁶
- Expanding Eligibility for Certain Military Decorations and Awards, October 6, 2022
- Promoting the Arts, the Humanities, and Museum and Library Services, October 5, 2022²⁵⁷
- Ensuring Robust Consideration of Evolving National Security Risks by the Committee on Foreign Investment in the United States, September 20, 2022
- Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022, September 16, 2022
- Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy, September 15, 2022²⁵⁸
- Implementation of the CHIPS Act of 2022, August 30, 2022
- Securing Access to Reproductive and Other Healthcare Services, August 11, 2022

- Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home, July 21, 2022
- Establishing an Emergency Board to Investigate Disputes between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations, July 20, 2022
- Protecting Access to Reproductive Healthcare Services, July 13, 2022
- Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, June 21, 2022
- Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, May 31, 2022
- Enhancing the National Quantum Initiative Advisory Committee, June 9, 2022
- Strengthening the Nation's Forests, Communities, and Local Economies, April 27, 2022
- Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage, April 8, 2022
- Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression, April 8, 2022
- Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency, March 18, 2022²⁵⁹
- Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression, March 15, 2022
- Ensuring Responsible Development of Digital Assets, March 14, 2022
- Prohibiting Certain Imports and New Investments with Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine, March 10, 2022
- Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine, February 23, 2022

- Protecting Certain Property of Da Afghanistan Bank for the Benefit of the People of Afghanistan, February 15, 2022
- Use of Project Labor Agreements for Federal Construction Projects, February 9, 2022

Presidential memoranda and notices are trickier to tally than executive orders.²⁶⁰ They may or may not be published in the *Federal Register* or other readily accessible sources, depending on each administration's own determination of "general applicability and legal effect."²⁶¹ Nor are memoranda always classified or numbered the way executive orders are now, although one does find the categories in addition to "Memorandum." These include "Determination" (the baby formula emergency decree was a determination), "Notice," "Proclamation," "Presidential Order," and "Other."

They can be minor declarations celebrating events or people; or noting grave and sweeping needs, such as the February 2022 Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic;²⁶² or extending mask requirements on planes and public transit,²⁶³ as masking in health care facilities was quietly set aside by the Centers for Disease Control and Prevention.²⁶⁴ Notable in 2022 have been Biden's boasts of new executive actions on gun dealers, and background checks, serial numbers, and the like, to address the "epidemic of gun violence."²⁶⁵

In 2022, Biden made promises on student loan forgiveness known to be unconstitutional,²⁶⁶ unjustified by any emergency, and imposing costs well beyond the \$30 billion per year already acknowledged.²⁶⁷ Congressional authority is needed for debt forgiveness.²⁶⁸ Raising tuition for future students will add further costs to the rule and may contribute to a decline in college enrollment.²⁶⁹ Behind the scenes in classic dark-matter fashion, a Department of Education website notice disqualified millions who thought they were covered under debt relief,²⁷⁰ by which time the Consumer Financial Protection Bureau had already issued

guidance to lenders on their loan-forgiveness communications with borrowers.²⁷¹

As Figure 16 shows, according to the FederalRegister.gov online database (which records totals back to 1994), there were 30 memoranda in 2021, with 26 from Biden and 4 from Trump. There were 46 memoranda from Biden in 2022. Apart from Trump's higher final count of 49 that pressed a deregulatory agenda, 2022 marks the highest single-year count to appear in the *Federal Register* database (2010's 42 comes in second). Trump issued 137 memoranda during his term.²⁷²

Recognizing that overlap occurs in transition years, one sees that during the eight calendar years encompassing George W. Bush's presidency, 129 memoranda were published in the *Federal Register*, whereas the Obama years saw 255. Clinton published 84 memoranda during his presidency.²⁷³ Following is a sample of Biden's 46 presidential memoranda of 2022:

- Over 20 "delegations of authority" under the 1961 Foreign Assistance Act (the last on December 28, 2022²⁷⁴), a law until recently seen as a Cold War "anachronism"²⁷⁵
- Certifications Regarding Disclosure of Information in Certain Records Related to the Assassination of President John F. Kennedy, December 20, 2022
- Promoting Accountability for Conflict-Related Sexual Violence, December 6, 2022
- Uniform Standards for Tribal Consultation, December 5, 2022
- Presidential Waiver of Statutory Requirements Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, October 6, 2022
- Delegation of Authority under Sections 102 and 106 of the CHIPS Act of 2022, August 15, 2022
- Partnership for Global Infrastructure and Investment, June 6, 2022
- Establishment of the White House Task Force to Address Online Harassment and Abuse, June 22, 2022

- Delegation of Authority under the European Energy Security and Diversification Act of 2019, June 14, 2022
- Addressing the Long-Term Effects of COVID-19, April 4, 2022
- Maximizing Assistance to Respond to COVID-19, March 4, 2022
- Maximizing Assistance to Respond to COVID-19, January 3, 2022

The pertinent question regarding federal intervention is what these executive orders and memoranda are used for and what they do, as well as the authority or lack thereof used to justify them. One must also recognize that the *Federal Register*, apart from the solid cataloging of executive orders, is an incomplete compendium of executive actions.

Orders and memoranda can have significant effects. A smaller number of them may not necessarily mean smaller effects. One finds presidents of both parties promising and following through on unilateral executive actions if Congress fails to act on their agenda and, in Biden's case, facing pressures to act aggressively even in the wake of Supreme Court decisions at odds with a progressive agenda.²⁷⁶

As with the *Federal Register* rule counts, the tallies of orders and memoranda are noteworthy and necessary to track, but do not tell the full story. In 2014, Obama administration memoranda and directives, which did not appear among the presidential ones embedded in Figure 16, created a new financial investment instrument, implemented new positive rights regarding work hours, and applied employment preferences for federal contractors.²⁷⁷ In contrast, four of Obama's executive orders addressed overregulation and rollbacks,²⁷⁸ such as Obama's Executive Order 13563 on regulatory review and reform.²⁷⁹ That deviation did apparently deliver a few billion dollars in cuts that ended up swamped by other rules and guidance. The same may be said, in some respects, for the Trump program.

The foundational executive orders directed at regulatory restraint were Clinton's 1993 Ex-

Executive Order 12866²⁸⁰ and President Ronald Reagan's Executive Order 12291, which formalized central regulatory review at OMB.²⁸¹ Clinton's was a pullback from the stronger oversight of the Reagan order in that it sought "to reaffirm the primacy of Federal agencies in the regulatory decision-making process."²⁸² It was dominant until Biden's "Modernizing Regulatory Review" directive, although still nominally invoked by the administration.

The United States existed for several decades before any president issued more than two dozen executive orders. That was President Franklin Pierce, who served from 1853 to 1857. Orders numbered in the single digits or teens until President Abraham Lincoln's federal consolidations²⁸³ and the subsequent Reconstruction period. President Ulysses S. Grant's 217 set a record.

From the 20th century onward, executive orders have numbered over 100 during every presidency and have sometimes soared into

the thousands. President Franklin D. Roosevelt—the longest-serving president in U.S. history, elected to four terms and serving a full three—issued 3,467 executive orders.²⁸⁴ Table 4 provides a look at executive order counts by administration since the nation's founding through Biden's second year.²⁸⁵

In addition to the notices and executive orders that appear in the *Federal Register*, there are pronouncements on the periphery. As in the Obama years, one sees numerous unclassified and uncounted fact sheets, such as that on "Equity Action Plans."²⁸⁶ Others include a Justice Department meat processing directive,²⁸⁷ new standards for a national electric vehicle charging network,²⁸⁸ specifications on clean school buses and other infrastructure,²⁸⁹ an effort under way to expand the number of government agencies tracking and countering private drones,²⁹⁰ and one titled "The United We Stand Summit: Taking Action to Prevent and Address Hate-Motivated Violence and Foster Unity."²⁹¹

Another Dimension of Regulatory Dark Matter: Over 22,000 Agency Public Notices Annually

Along with presidential proclamations are those of departments and agencies. These are numerous and sweeping. Through various kinds of guidance documents, notices, and policy statements, government can signal expectations, specify parameters for, and influence various pursuits, including health care, retirement, education, energy production, finance, land and resource management, science and research, and manufacturing. These may not appear in the *Federal Register* at all.

A prominent Obama-era proclamation was the IRS's granting of waivers of the Patient Protection and Affordable Care Act's employer mandate, in defiance of statutory language.²⁹² Playing a similar role today is Biden's student loan forgiveness, but also the Department of Education's quiet changing of eligibility rules on a website.²⁹³ Other prominent newcomers in the guidance world are the Federal Trade Commission's guidance on disclosures for social media influencers²⁹⁴ and the "Policy Statement Regarding the Scope of Unfair Methods of Competition under Section 5 of the Federal Trade Commission Act."²⁹⁵ The Department of Transportation in 2022 issued a copycat version, "Guidance Regarding Interpretation of Unfair and Deceptive Practices."²⁹⁶

The State Department, with 60 global partners, in 2022 launched the "Declaration for the Future of the Internet."²⁹⁷ Similarly ambitious is the White House Office of Science and Technology Policy's "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People," which also functions as prescriptive guidance. It notes that "[d]esigners, developers, and deployers of automated systems should take proactive and continuous

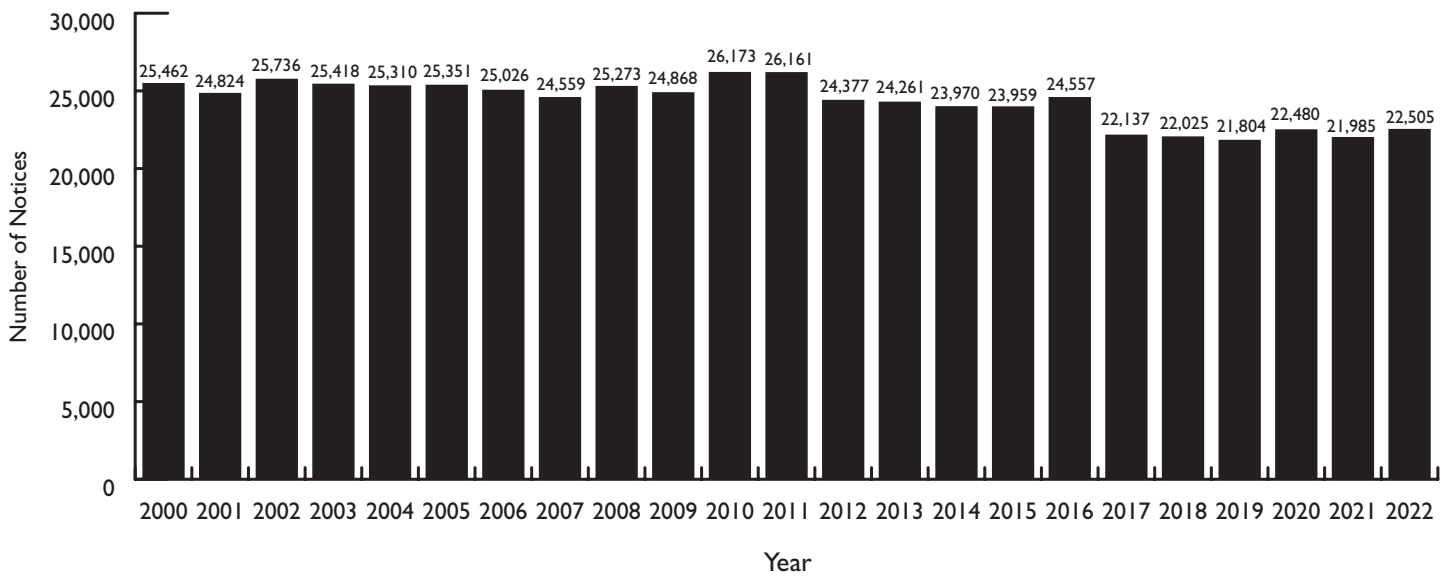
measures to protect individuals and communities from algorithmic discrimination and to use and design systems in an equitable way."²⁹⁸

Post-CARES Act eviction moratorium extensions by both the Trump and the Biden administrations following the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) were prominent dark matter regulations. A less attention-getting but noteworthy piece of dark matter is the "Notice of Federal Guidelines" from the National Highway Traffic Safety Administration on "Cybersecurity Best Practices for the Safety of Modern Vehicles."²⁹⁹ Just four months later, in January 2023, the Federal Aviation Administration issued a ground-stop of air travel owing to a "damaged database file with no evidence of a cyberattack."³⁰⁰ Similarly ineffective rules failed to prevent pipeline disruptions of East Coast fuel service during a May 2021 ransomware attack despite a preexisting dedicated Department of Energy "Emergency Response Organization."³⁰¹

Federally directed electric vehicle charging networks and drone airspace management will likely be significantly governed by guidance.³⁰² Washington is also pursuing government-run payment systems³⁰³ and a central bank digital currency, digital IDs, and other moves that allow government to remotely regulate without a law, without written regulations, without even formal guidance. Push-button regulation from a distance is enabled by the Internet of Things,³⁰⁴ seen already in the bipartisan infrastructure law's requirement for future "passive monitoring" of vehicles.³⁰⁵

As the House Oversight Committee detailed in the 2018 report "Shining Light on Regu-

Figure 17. Public Notices in the *Federal Register*, 2000–2022



Source: National Archives and Records Administration, Office of the Federal Register.

22,505 notices in 2022; 683,595 since 1994.

latory Dark Matter,” agencies have issued at least 13,000 guidance documents since 2008. Only 189 had been submitted to both Congress and the Government Accountability Office, as required by the Congressional Review Act. At least 536 were significant, but only 328 were submitted to OMB for review.³⁰⁶

Even the 13,000 documents agencies reluctantly reported to Congress are an undercount. Trump sought to address guidance in 2019’s Executive Order 13891, “Promoting the Rule of Law through Improved Agency Guidance Documents,” which established online portals and inventories at agency websites. Biden eliminated these portals and disclosures.

A count derived from this author’s August 2022 survey of agency portal remnants topped 107,000 entries.³⁰⁷ This partial tally would not have been possible without the Trump executive order. As it stands, disclosure could deteriorate, because the formal rulemakings on guidance procedures that Executive Order 13891 required of agencies have also been systematically eliminated by nearly all of the 32 departments and agencies

that adopted them. At Biden’s behest, these agencies and departments wrote new rules to disavow and eliminate the nascent disclosures.³⁰⁸ Reporting of guidance or notices in the *Federal Register* was never reconciled with agencies’ guidance document portals before Biden’s eliminating the project.

In addition to the *Federal Register*’s final and proposed rules one often examines, certain public notices issued throughout the year appear in the *Federal Register*. Unlike the hard guidance documents the House Oversight Committee sought, these typically consist of nonrulemaking documents, such as meeting and hearing announcements and agency organizational material. But numbering in the tens of thousands, yearly public notices can also include memoranda, bulletins, guidance documents, alerts, and other proclamations that may be consequential to the public and may overlap with what would have materialized in a portal project carried to fruition.

Figure 17 depicts the number of notices published annually in the *Federal Register*, which peaked at over 26,000 in 2010 and 2011 (and are comparable to “Other” in Ap-

pendix: Historical Tables, Part B). Standing at 22,505 at the end of 2022, notices have dipped below 24,000 only eight times since 1996. The dips during the Trump “deregulatory” years have reversed. Although many notices may rightly be regarded as trivial, there have been 683,595 public notices since 1994 and well over 1 million since the 1970s. Even the trivial-seeming meeting notice announcements can implement progressive regulatory pursuits.³⁰⁹

Increased unilateral executive and independent agency proclamations perpetrated by memorandum, notice, letter, bulletin, and other means all come atop traditional rules and regulations that are subject to minimal

cost and burden disclosure. The fusion of heavy spending and federal regulatory interventions of recent years can be expected to lead to suspect guidance material, including the notices in Figure 17. Increased reliance on guidance and notices, if allowed, will render the effects of central government intervention and displacement of private activity even less transparent than they are already.

It is time to address federal guidance document disclosure in a comprehensive way.³¹⁰ Given surges in government spending and programs concurrent with the hollowing of portals, guidance procedures, and OMB review of guidance, an unleashing of regulatory dark matter appears in the offing.

A Note on Rule Reviews at OMB's Office of Information and Regulatory Affairs

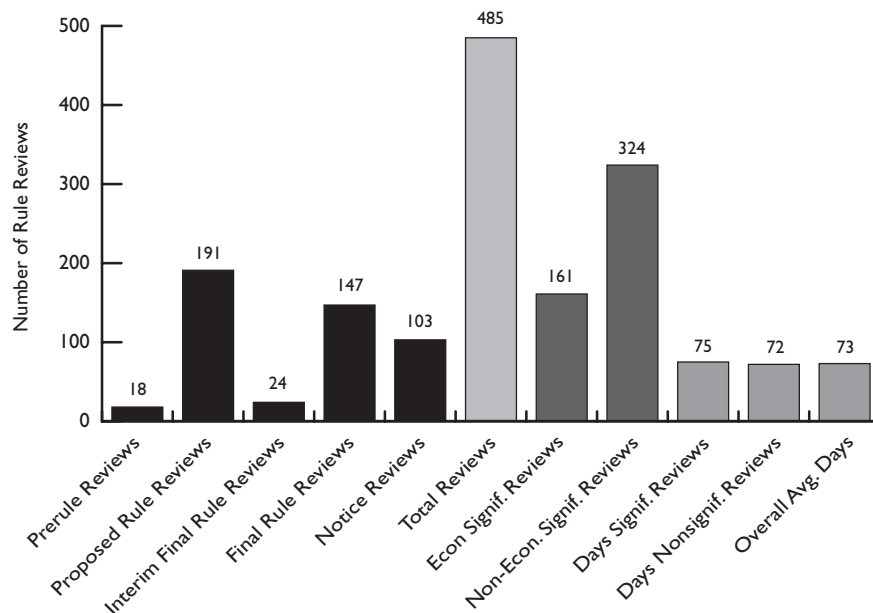
Tracking the effects of rules and regulations, executive orders, memoranda, and regulatory guidance is vital. These alternative regulatory actions have become powerful means of working around the constitutional system of government the Framers envisioned: legislation enacted by elected representatives.

OMB's mission drift is obvious when comparing Trump's "one-in, two-out" emphasis with Biden's directing OMB to search for "net benefits" as defined by progressives. The shift from analysis to cheerleading shows the need for Congress to define parameters of regulatory review in a way that the executive cannot tamper with it.³¹¹

Nevertheless, the number of Executive Order 12866 rule reviews that take place, whatever transformed motivations govern behind the scenes since its publication, is one of the metrics Congress will need to watch. Figure 18 presents the 485 rule reviews conducted by OMB during calendar year 2022, broken down by stage and by economic significance.

There were 503 total reviews in Biden's first year and 669 in Trump's final year. Under Biden, 2022's economically significant rules reviewed stood at 161, down from 172 in 2021. Figure 18 also shows the number of days OMB took to review significant and nonsignificant rules and regulations, a pro-

Figure 18. Number of OMB Rule Reviews and Average Days under Review, 2022



Source: Author search on RegInfo.gov, "Review Counts" database search engine under Regulatory Review heading.

cess that tends to take just over two months. During the pre-Executive Order 12866 years of 1991–1993 (see Appendix: Historical Tables, Part D), rule review times were shorter than today, despite the number of rules issued being considerably higher back then. Interim final rules reviewed by OMB now stand at just 24 compared with 58 during Biden’s first year and 77 during Trump’s last. These had numbered only 12 and 11 in Trump’s first two years, respectively. Prerule reviews dropped from 30 to just 18 over the past year (see Figure 18 and Appendix: Historical Tables, Part D).

Although agencies issued thousands of notices, Figure 18 shows that OMB reviewed just 103 during calendar year 2022. That is up from 72 in 2021 and comparable to Trump’s 104 upon exit. Low as these are,

they are still higher than the few dozen seen in most years since 1993. A history of the number of rules and notices reviewed annually by the White House Office of Information and Regulatory Affairs appears in Appendix: Historical Tables, Part D, which presents a detailed breakdown of rules reviewed by type and by average days for review from 1991 through 2021. In recent years, several dozen of the notices OMB reviewed were deemed to have economically significant effects.³¹²

The president and Congress can ensure that adequate review and supervision of guidance documents and notices take place by investigating OMB conclusion actions, such as whether and what kinds of rules were or were not returned to agencies for modification, and for what kinds of modifications.

Analysis of “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions”

“The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Unified Agenda) is the document in which agencies have outlined regulatory priorities since the 1980s. Along with the *Federal Register*, the Unified Agenda is one of the few limited and imperfect tools available for regulatory disclosure. Much could be done to improve the quality of the information compiled within it.

The Unified Agenda traditionally appeared each fall and, minus the “Regulatory Plan” component, spring. However, the publication of the Unified Agenda has become erratic in recent years. Its traditional April and October schedule is now often delayed into summer and winter. The annual *Report to Congress* on regulatory costs and benefits has also been chronically late, with Biden’s fall 2022 edition appearing on January 4, 2023, marking the longest delay since Obama skipped the 2012 spring edition entirely.³¹³

The Unified Agenda appears with little public fanfare, but election-minded administrations can still prompt agencies to either accelerate or slow down rulemaking priorities, thereby affecting The Unified Agenda’s content and bulk.

The year 2017 saw the beginning of Trump’s one-in, two-out directive for federal agency rulemaking by way of Trump’s Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” The normally staid Agenda release was accompanied during the Trump years by White House Office of Management and Budget statements touting progress on meeting goals for regulatory streamlining and by media events com-

plete with red-tape props³¹⁴ and a *Wall Street Journal* op-ed by then administrator of the Office of Information and Regulatory Affairs (OIRA) Neomi Rao.³¹⁵ The differences are night and day with the Biden-era reversal at OMB, with both the semiannual 2021 and 2022 editions accompanied by proclamations of claimed net benefits, rather than calls for regulatory oversight.

The Unified Agenda operates like a cross-sectional snapshot of federal actions moving through the regulatory pipeline. It breaks down many rules from over 60 federal departments, agencies, and commissions primarily along three categories:

- Active actions: prerule measures and proposed and final rules, which are rules in the production process
- Completed actions: actions completed during the previous (roughly) six months, since the prior Agenda edition, but not all-inclusive
- Long-term actions: anticipated longer-term rulemakings beyond 12 months

Many rules in the Unified Agenda directly or indirectly affect state and local governments. The rules in the Unified Agenda often carry over at the same stage from one year to the next, or reappear in subsequent editions at different stages. In the fall 2022 edition, 386 of the active actions appeared for the first time, compared with 495 the year before and 444 in Trump’s last full calendar year.

Observers have long recognized the inconsistent and subjective nature of the Unified Agenda’s contents, recognizing that it “provides only a semi-filtered view of each

agency's intentions," and that it "reflect[s] what the agency wants to make public, not necessarily all that they are actually considering, and some highly controversial issues may be withheld."³¹⁶

Although agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda, that temporarily changed under the Trump administration, which instructed as follows:

Agencies must make every effort to include actions they plan to pursue, because if an item is not on the Unified Agenda, under Executive Order 13771, an agency cannot move forward unless it obtains a waiver or the action is required by law. A clear and accurate Agenda helps avoid unfair surprise and achieves greater predictability of upcoming actions.³¹⁷

So, numbers of rules and their content fluctuate given administration priorities, and sometimes top-down reversals in reporting emphasis occur. Another example occurred during the Obama administration, when spring and fall 2012 guidelines from the then OIRA administrator Cass Sunstein called on agencies to "please consider terminating" the listing of stalled long-term entries until action appears more likely.³¹⁸ That request became the more emphatic "please remove" in 2013.³¹⁹

Reincorporation of long-term time lines with those less definite resumed in 2017 during the Trump administration, with OIRA leadership instructing agency heads that the administration sees "merit in their continued inclusion" where "listing of such entries still benefits readers."³²⁰ In the Biden whole-of-government regime, functioning disclosure ought to reveal a considerable number of long-term rules related to equity, climate, and the like, but instead one sees an implausible lack of rules from the likes of the Consumer Financial Protection Bureau and the Securities and Exchange Commission on long-term undertakings in these primary areas.

3,690 Rules in the Fall 2022 Unified Agenda Pipeline

The fall 2022 "Regulatory Plan and Unified Agenda of Regulatory and Deregulatory Actions," released on January 4, 2023, found 69 federal agencies, departments, and commissions listing 3,690 regulations in the active (prerule, proposed, and final), recently completed, and long-term stages, many of which had been in the pipeline for some time (see Figure 19).³²¹ That compares with 3,777 in the fall 2021 edition.

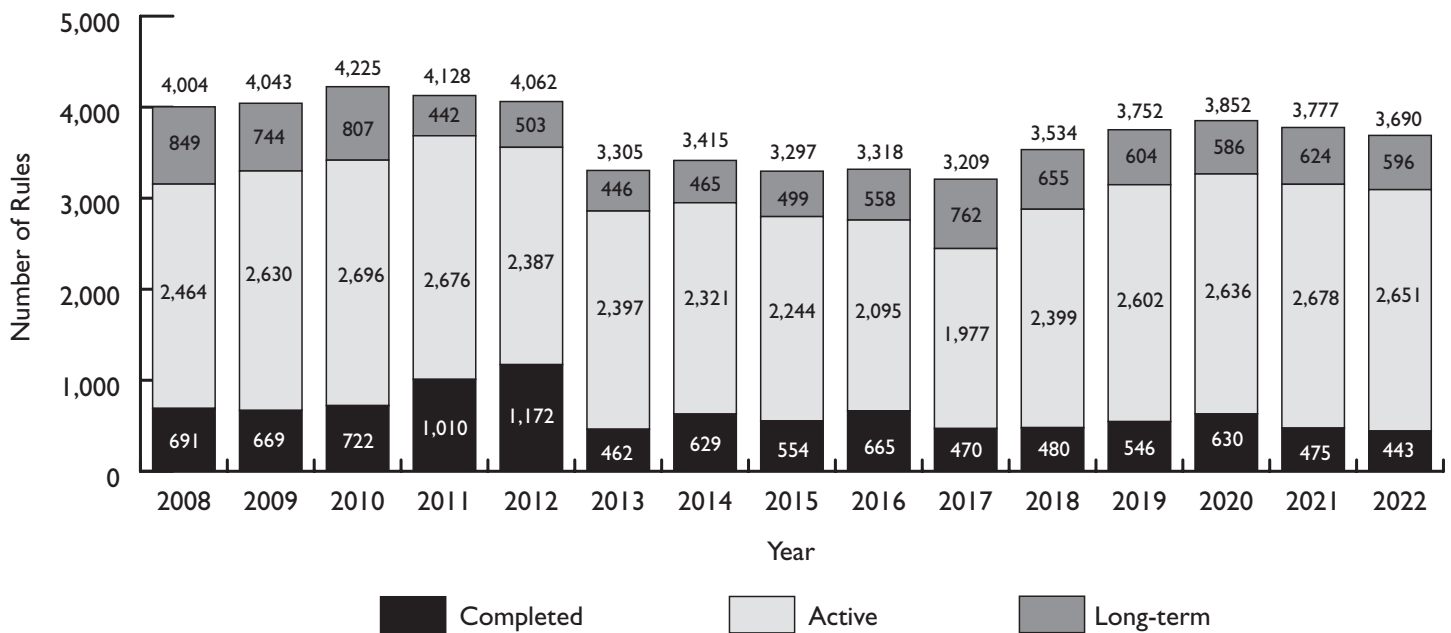
The tally of 3,852 two years ago under Trump was his highest, and the highest since 2012 under Obama; however, 653 rules in Trump's fall 2020 pipeline had been deemed deregulatory for a net of 3,199. The Trump-era fall 2017 Agenda pipeline of 3,209 contained the fewest rules since 1983, even without counting that edition's 540 deregulatory entries. (For a history of the numbers of rules in the Unified Agenda since 1983, see Appendix: Historical Tables, Part E.)

As Figure 19 shows, the Unified Agenda pipeline prior to 2013 was prone to exceeding 4,000 rules (active, completed, and long-term) each fall. Counts were even higher in the 1990s, when the all-time high count of 5,119 rules occurred in the fall 1994 Agenda. The 19 percent drop under Obama—from 4,062 rules in 2012 to 3,305 in 2013—appears to reflect, at least in part, election year considerations.³²²

Table 5 breaks out in detail all 3,690 rules in the pipeline depicted in Figure 19 by issuing agency, commission, or department. It shows numbers of rules at the active, completed, and long-term stages. (For the total numbers of rules by department and agency from previous year-end editions of the Unified Agenda since 2003, see Appendix: Historical Tables, Part F.)

Active rules. The number of active rules in the fall Agendas remains well above 2,000, with the exception being a dip to 1,977 in

Figure 19. Total Agency Rules in the Fall Unified Agenda Pipeline, 2008–2022



Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, consecutive years, and database at <http://reginfo.gov>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

2017 under Trump, with 448 deemed deregulatory. The gross number of active rules rose subsequently to 2,636 in 2020 (see Figure 19), of which 496 were deregulatory. In the fall 2022 edition, the active rule count was back up to 2,651. That is slightly less than 2021, with deregulatory offsets out of the picture in both Biden years. The active rule count in the Unified Agenda of federal regulations under Biden is the highest it has been since 2011.

Long-term rules. In Trump’s first fall Agenda at the end of 2017, long-term rules in the pipeline stood at 762 (30 of them deregulatory), a jump from 558 in 2016. That may have reflected in part the OMB directives to resume disclosure of this category of rules. By Trump’s final year, the Unified Agenda’s long-term rule count fell to 586, with 56 deemed deregulatory. With Biden, long-term rules in fall 2022 stood at 596, compared with 624 in fall 2021.

Completed rules. Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last Agenda.” The number of rules in the completed category in fall Agendas (spring editions are not shown in Figure 19) rose steadily and rapidly under Obama, from 669 in 2009 to 1,172 in 2012, a 75.2 percent increase. The number then dropped sharply in 2013 to 462. This category stood at 470 and 480 in Trump’s 2017 and 2018 fall Agendas, respectively, and then rose to 546 in 2019 and to 630 in 2020. A significant proportion of Trump’s completed rules were again deregulatory (62 in 2017, 94 in 2018, 106 in 2019, and 101 in 2020), for considerably lower nets.

These compare with 475 and 443 completed rules in Biden’s 2021 and 2022 fall Agendas, respectively. For a better comparison of final rules to the *Federal Register*, this report will shortly turn to the completed subcategory of economically significant rules.

The active rule count in the Unified Agenda of federal regulations under Biden is the highest it has been since 2011.

Table 5. Unified Agenda Entries by Department and Agency, Fall 2022

Department and Agency	Number of Rules	Active	Completed	Long Term
Department of Agriculture	168	111	24	33
Department of Commerce	272	172	59	41
Department of Defense	186	136	30	20
Department of Education	47	35	10	2
Department of Energy	133	100	22	11
Department of Health and Human Services	236	182	31	23
Department of Homeland Security	143	87	12	44
Department of Housing and Urban Development	59	52	5	2
Department of the Interior	350	288	45	17
Department of Justice	127	99	6	22
Department of Labor	103	77	7	19
Department of State	54	40	9	5
Department of Transportation	306	218	25	63
Department of Treasury	337	247	24	66
Department of Veterans Affairs	93	76	16	1
Environmental Protection Agency	212	151	14	47
Agency for International Development	15	14		1
Architectural and Transportation Barriers Compliance Board	5	5		
CPBSD*	4	3	1	
Commodity Futures Trading Commission	24	21	3	
Consumer Financial Protection Bureau	11	10	1	
Consumer Product Safety Commission	25	19	2	4
Corporation for National and Community Service	14	11	3	
Council of the Inspectors General on Integrity and Efficiency	0			
Council on Environmental Quality	3	3		
Court Services/Offender Supervision, DC	7	1	2	4
Federal Acquisition Regulation	57	48	6	3
Farm Credit Administration	18	12	2	4
Federal Communications Commission	92		4	88
Federal Deposit Insurance Corporation	22	11	5	6
Federal Energy Regulatory Commission	23	21	2	
Federal Housing Finance Agency	15	11	1	3
Federal Maritime Commission	5	5		
Federal Mediation and Conciliation Service	6	4	2	
Federal Mine Safety and Health Review Commission	1	1		
Federal Permitting Improvement Steering Council	2	1		1
Federal Reserve System	32	12	12	8
Federal Trade Commission	25	24		1
General Services Administration	38	31	6	1
Institute of Museum and Library Services	1	1		
Inter-American Foundation	2	2		
National Aeronautics and Space Administration	5	5		

Department and Agency	Number of Rules	Active	Completed	Long Term
National Archives and Records Administration	12	9	2	1
National Credit Union Administration	30	20	4	6
National Endowment for the Arts	5	5		
National Endowment for the Humanities	3	2	1	
National Indian Gaming Commission	16	3	7	6
National Labor Relations Board	4	2		2
National Mediation Board	1	1		
National Science Foundation	5	4	1	
National Transportation Safety Board	10	9	1	
Nuclear Regulatory Commission	58	30	10	18
Office of Government Ethics	11	11		
Office of Management and Budget	8	8		
Office of National Drug Control Policy	1		1	
Office of Personnel Management	40	32	6	2
Office of the Intellectual Property Enforcement Coordinator	1	1		
Peace Corps	4	2		2
Postal Regulatory Commission	8		2	6
Pension Benefit Guaranty Corporation	11	9	2	
Railroad Retirement Board	4	4		
Securities and Exchange Commission	65	52	5	8
Small Business Administration	75	69	6	
Social Security Administration	25	23	2	
Surface Transportation Board	11	5	1	5
Tennessee Valley Authority	0			
U.S. Agency for Global Media	3	3		
U.S. Commission on Civil Rights	1		1	
TOTAL	3,690	2,651	443	596

* Committee for Purchase from People Who Are Blind or Severely Disabled.

Top Rulemaking Departments and Agencies

A relative handful of executive branch agencies each year account for the greatest number of the rules in the Unified Agenda pipeline. In the Biden fall 2022 Agenda, the departments of the Interior, the Treasury, Transportation, Commerce, and Health and Human Services are the most active (see Table 6). These top five, with 1,501 rules among them, account for 41 percent of the 3,690 rules in the Unified Agenda pipeline at the moment. The En-

vironmental Protection Agency, with 212 rules, comes in sixth.

The top-five independent agencies in the Unified Agenda pipeline by rule count (excluding the multiagency Federal Acquisition Regulation System³²³) are the Federal Communications Commission, Small Business Administration, Securities and Exchange Commission, Nuclear Regulatory Commission, and the Federal Reserve System (see Table 6). Their combined total of 322 rules accounts for 9 percent of the 3,690 rules in the fall Agenda. Combined, the top executive and independent agency components,

Table 6. Top Rule-Producing Executive and Independent Agencies
(From Fall 2021 Unified Agenda, total of active, completed, and long-term rules)

Executive Agency	Number of Rules
1. Department of the Interior	350
2. Department of the Treasury	337
3. Department of Transportation	306
4. Department of Commerce	272
5. Department of Health and Human Services	236
TOTAL	1,501
% of Total Agenda Pipeline of 3,690	41

Independent Agency	Number of Rules
1. Federal Communications Commission	92
2. Small Business Administration	75
3. Securities and Exchange Commission	65
4. Nuclear Regulatory Commission	58
5. Federal Reserve System	32
TOTAL	322
% of Total Agenda Pipeline of 3,690	9

Top 5 Executives plus Top 5 Independents	1,823
% of Total Agenda Pipeline	49

Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, and database, <http://www.reginfo.gov>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

numbering 1,823, make up 49 percent of the total. The percentage was similar during the Trump years, with the difference that some entries then were explicitly deemed deregulatory at that time.³²⁴

Biden’s Economically Significant Rules in the Unified Agenda

A subset of the Unified Agenda’s 3,690 rules is classified as economically significant, which means that agencies estimate their yearly economic effects at \$100 million or more. That generally reflects increased costs, although sometimes an economically significant rule can be intended to reduce costs, which had been the case following Trump’s Executive Order 13771.

Active and completed components of this costly subset are on the rise under Biden. As Table 7 shows, 332 economically significant rules from 25 departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline.

Figure 20 depicts 2022’s 332 economically significant rules alongside those of the previous decade and a half. The number of economically significant rules in the annual fall pipeline rose under Obama, topped out twice at 224, and finished out 2016 with 193.³²⁵ In Trump’s first fall Unified Agenda in 2017, the administration brought the count down by 27 percent, an effect magnified by the fact that 30 of the 140 rules at that time were deemed deregulatory.

Table 7. 332 Economically Significant Rules in the Fall Unified Agenda Pipeline Expected to Have \$100 Million or More in Annual Economic Impact, Fall 2022

	Rules	Unified Agenda Active			Completed	Long Term
		Prerule	Proposed	Final		
Department of Agriculture	16		4	6	3	3
Department of Commerce	2			2		
Department of Defense	5		3	2		
Department of Education	23	7	7		9	
Department of Energy	16	2	7	6		1
Department of Health and Human Services	69		35	13	16	5
Department of Homeland Security	20		6	5	2	7
Department of Housing and Urban Development	3		1	1		1
Department of the Interior	9		6	1	1	1
Department of Justice	5		2	3		
Department of Labor	26	1	12	4	4	5
Department of State	2			1	1	
Department of Transportation	18	2	11	1	3	1
Department of Treasury	24		5	12	5	2
Department of Veterans Affairs	13		5	6	2	
Environmental Protection Agency	21		12	7	2	
Consumer Product Safety Commission	3			3		
Federal Acquisition Regulation	5		3	2		
Federal Communications Commission	7				1	6
Federal Energy Regulatory Commission	1				1	
Federal Housing Finance Agency	3		1	1		1
Nuclear Regulatory Commission	3		1		1	1
Office of Personnel Management	5			2	2	1
Pension Benefit Guaranty Corporation	2		1	1		
Small Business Administration	31			31		
TOTAL	332	12	122	110	53	35

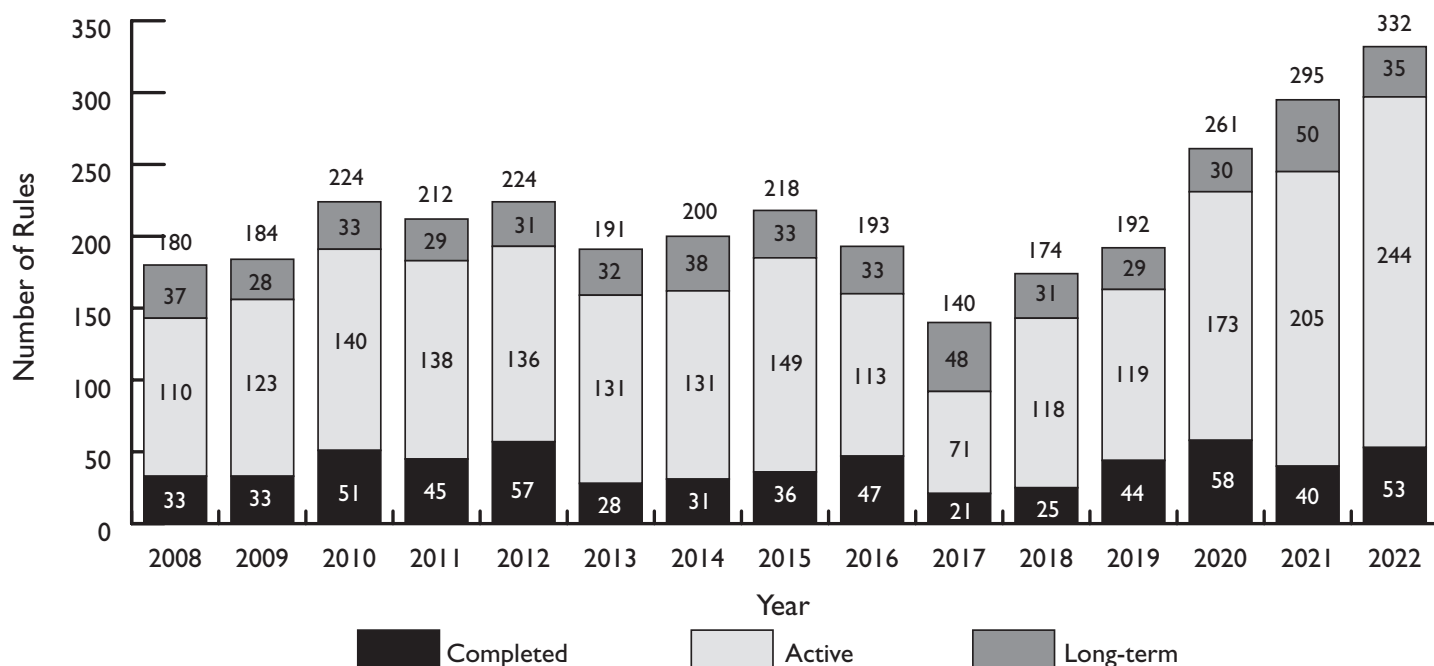
Source: Compiled from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from the online edition at <http://www.reginfo.gov>.

For comparison, Biden’s overall tally of 332 economically significant rules in the pipeline represents a 12 percent increase over his own first year and far exceeds the Obama years. Thirty-six of these rules in the active category relate to the pandemic-spawned Paycheck Protection Program (PPP), accounting for a share of economically significant rulemaking that did not exist before COVID-19. Despite the boldness of the Biden regulatory agenda, the Securities and Exchange Com-

mission and other financial entities are absent from long-term economically significant rulemakings, a thoroughly implausible omission given the climate, equity, justice, and inclusive recovery agendas in play.

Biden’s count exceeds by 27 percent Trump’s final year (2020) gross count of 261 economically significant rules. Trump’s final count was his own highest, as shown in Figure 20, albeit with a subset of rules that

Figure 20. 332 Economically Significant Rules in the Unified Agenda Pipeline, 2008–2022



Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, various years.

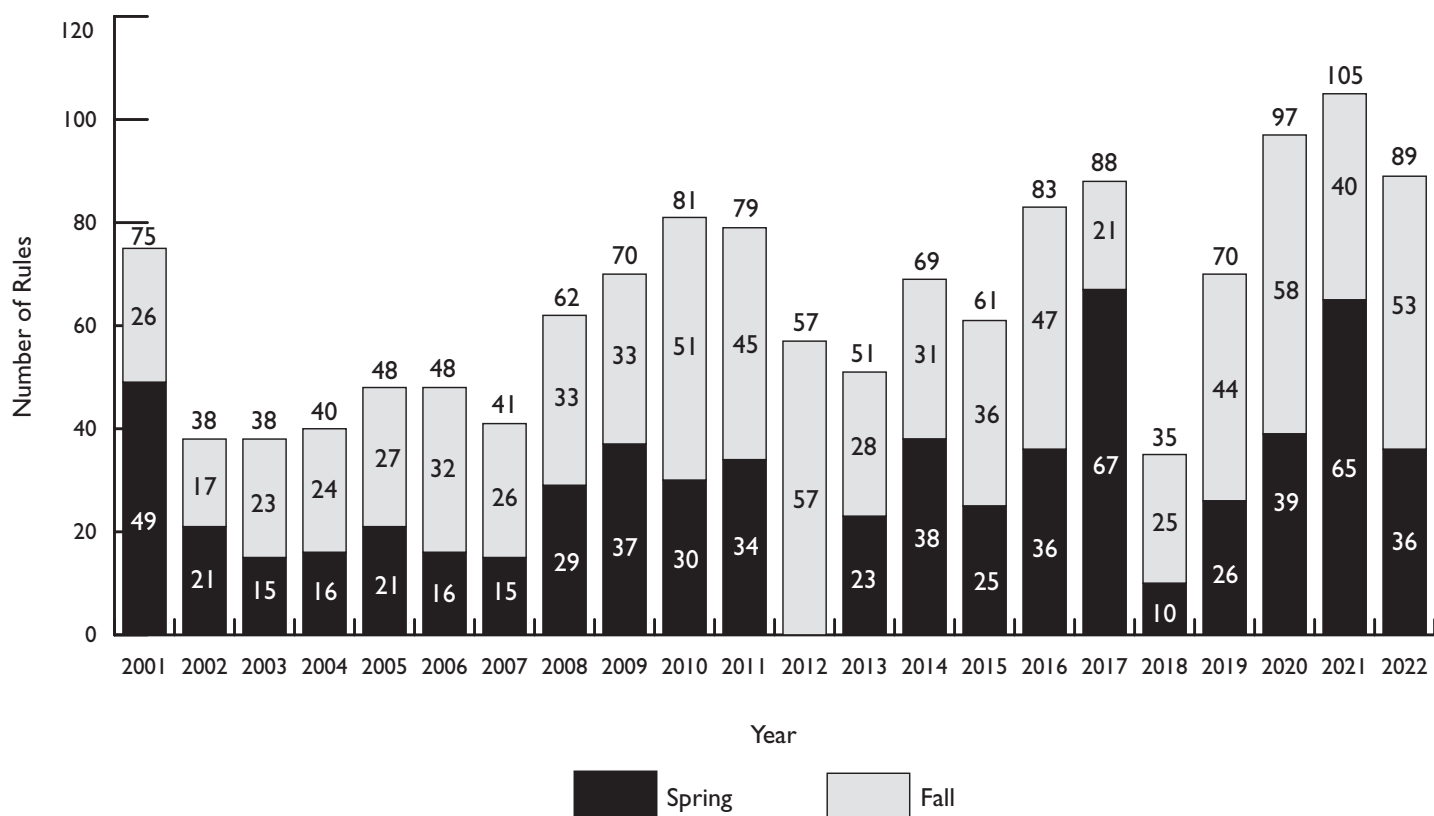
were deregulatory. Thirty-six of the Trump economically significant rules in 2020 were deemed deregulatory for a net of 225, which Biden tops by 47 percent, a nontrivial difference. (The full list of the 332 economically significant rules in the 2022 Agenda pipeline is available in Appendix: Historical Tables, Part G.)

Figure 20 also breaks down economically significant rules into completed, active, and long-term categories. Among the 332 economically significant rules in the fall 2022 edition, 244 stand at the active phase, compared with Biden’s 205 in fall 2021 and Trump’s 173 in 2020. The Trump administration’s fall 2017 Agenda had only 71 economically significant rules in the pipeline. Note that Biden’s level of active economically significant rules greatly exceeds levels seen in the Obama-era Agendas. Obama’s eight-year average of active rules across the fall Agendas was 133; George W. Bush’s eight-year average was 87. Trump’s average across the active category for his four years in office was 120, including deregulatory measures.

As for economically significant rules at the completed stage in the fall Agendas, Obama’s counts were consistently higher than George W. Bush’s had been in earlier years. Figure 20 shows completed rules in the fall Agenda, apart from Trump’s 58 in 2020, peaking at 57 in 2012, and hitting their low of 21 under Trump in 2017. Of the 58 Trump rules completed in the fall 2020 Agenda, 14 were deemed deregulatory, leaving a net of 44 that did still exceed some historical levels. Biden’s 2022 count stands at 53.

One must note that the Trump administration did not classify as regulatory some of its rules with substantial impact. For example, the 2020 PPP was part of COVID-19 relief legislation, along with the rules for implementing it. Among the 261 economically significant rules in Trump’s fall Agenda, there were 28 Small Business Administration rules at the finalization (not completed) stage related to PPP that were not designated as either regulatory or deregulatory.³²⁶ The federal reaction to the COVID-19 crisis was a major variable

Figure 21. Annual Completed Economically Significant Rules in the Unified Agenda, 2001–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, spring and fall editions, various years.

affecting the flow of rules. Agencies were instructed to use emergency powers, some of which affected federal programs and rarely with deregulatory effect.

The completed rules in Figure 20 represent only those of the fall Agendas. A fuller picture of completed rules in any given year requires incorporating completed rules from the spring Agendas as well. Figure 21 isolates the totals of completed economically significant rules since 2001 from both the spring and fall Agendas. Here Biden tops his predecessors.

As Figure 21 shows, completed economically significant rules fell to 35 in the combined fall and spring 2018 Agendas under Trump but rose subsequently under him to 97 in 2020. Completed rules, however, are where the deregulatory counts really mattered for

the one-in, two-out directive. In both 2017 and 2020, Trump issued more completed economically significant rules than either Bush or Obama, but that may be partly due to the Administrative Procedure Act’s requirement for issuing a new rule to get rid of an old one. The deregulatory counts for Executive Order 13771 purposes were 16 in 2018, 18 in 2019, and 21 in 2020, and comprised significant proportions of the Trump totals. Subtracting the deregulatory rules from Trump’s tallies makes evident a substantial rollback in economically significant rulemaking.

Under the Biden administration, there were a combined 89 completed economically significant rules reported in 2022’s spring and fall Unified Agendas, as Figure 21 shows, compared with 105 in 2021. Despite the drop, partly explained perhaps by

self-imposed delays in key rules,³²⁷ Biden's 89 completed economically significant rules in 2022 exceed all other years depicted, including Trump's final year when deregulatory rules are subtracted.

Trump is not the only president to have deregulatory measures in the Unified Agenda, but predecessors never made the reduction agenda so explicit, nor did they ease the tracking of the relevant metrics as the Trump administration did with the Executive Order 13771 deregulatory designations in the OIRA database. Biden's count is 38 percent above Trump's final-year count, and exceeds anything seen under George W. Bush or Obama.

The spike in 2001 is an exception visible in Figure 21, but the level of completed economically significant rules was notably lower during the late 1990s and early 2000s than today. George W. Bush's total number of completed economically significant rules during his two terms was 390, for an average of 49 per year. Obama's total for his eight years was 551, an average of 69 per year. Granted, some agency midnight regulations from a prior administration get reflected in the totals for any first-year president, but this report emphasizes calendar-year comparisons. Trump's four-year average was 72.5 (given his total of 290), but again, OMB deemed over 50 of these rules as deregulatory.

Of the 3,690 rules in the Unified Agenda pipeline, each of the 332 deemed economically significant is estimated to have annual impacts of at least \$100 million. Those rules might be expected to eventually have combined annual effects of at least \$33 billion, particularly with the Trump offsets out of the picture.

New regulatory effects accumulate on top of previous years' costs. Attention to the economically significant rule subset should not distract policymakers and analysts from the remaining bulk of rules in the annual pipeline, which can have substantial costs or effects in their own right. One recent example is a 2021 Federal Highway Administration final rule amending regulations governing the accommodation of utilities on federal highway projects implausibly not deemed economically significant, nor even merely significant.³²⁸

Even when rules fall below a reported significance threshold, those unquantified accumulations can still impose substantial burdens on the regulated entities,³²⁹ and they need to be tracked and tabulated as the Article I Regulatory Budget Act introduced in the 118th Congress would do.³³⁰ Additionally, the regulatory effects of oft-ignored budget and transfer rules administering federal programs as well as guidance documents with regulatory impact increasingly matter.³³¹

Notable Rules and Rulemakings by Agency

In recent Unified Agenda editions and in other venues, federal agencies have noted the regulatory initiatives listed below, among many others pending or recently completed. The full list of the 332 economically significant rules in the fall 2022 Agenda pipeline appears in Appendix: Historical Tables, Part G.

Department of Agriculture

- Inclusive Competition and Market Integrity under the Packers and Stockyards Act, from the Agricultural Marketing Service³³²
- Rural Broadband Grant, Loan, and Loan Guarantee Program; Rural E-Connectivity Program (ReConnect Program)
- Standards for Birds Not Bred for Use in Research under the Animal Welfare Act³³³
- Establishment of a domestic hemp production program
- Revision of the nutrition facts panels for meat and poultry products and updating of certain reference amounts customarily consumed
- Supplemental Nutrition Assistance Program: procedural requirements for households that have zero gross countable income and include a work registrant
- Coronavirus Food Assistance Program
- Conservation Stewardship Program
- National Bioengineered Food Disclosure Standard
- Mandatory country-of-origin labeling of beef, fish, lamb, peanuts, and pork
- National school lunch and school breakfast programs: nutrition standards for all

foods sold in schools and certification of compliance with meal requirements for the National School Lunch Program, including milk, grains, and sodium (based in the Healthy, Hunger-Free Kids Act of 2010)³³⁴

- Standards for grades of canned baked beans³³⁵
- Rural Energy for America Program
- Mandatory inspection of catfish and catfish products
- Multifamily housing reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- Modernization of poultry slaughter inspection

Department of Commerce

- Taking and importation of marine mammals: taking marine mammals incidental to geophysical surveys related to oil and gas activities in the Gulf of Mexico
- Setting and adjustment of patent fees during FY 2020
- Right whale ship strike reduction

Department of Defense

- Revised Definition of “Waters of the United States” Rules 1 and 2 (0710-AB40 and 0710-AB47)
- Assessment of contractor implementation of cybersecurity requirements
- Cybersecurity Maturity Model Certification program
- National Industrial Security Program Operating Manual

Department of Education

- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance³³⁶
- Gainful employment rule to prepare students for employment in a recognized occupation
- Proposed priorities, requirements, definitions, and selection criteria: Striving Readers Comprehensive Literacy Program
- Income-driven “pay as you earn” program

Department of Energy

- Energy Conservation Program: Energy Conservation Standards for General Service Lamps (Biden phaseout of the Trump rescue of the traditional light bulb)³³⁷
- Energy efficiency and conservation standards for the following: natural gas furnaces;³³⁸ ceiling fans; manufactured housing; automatic commercial ice makers; wine chillers; battery chargers and power supplies; televisions; residential dehumidifiers; computer servers and computers; walk-in coolers and freezers; residential furnace fans, boilers, central air conditioners, heat pumps, dishwashers, conventional cooking products, and nonweatherized gas furnaces; mobile home furnaces and gas furnaces; electric distribution transformers; commercial refrigeration units, heat pumps, and water-heating equipment; clothes washers and dryers; room air conditioners; portable air conditioners; pool heaters and direct heating equipment; fluorescent and incandescent lamps; metal halide lamp fixtures; small electric motors; and refrigerated bottled or canned beverage vending machines
- Proposed rule on Executive Order 13920, “Securing the United States Bulk-Power System”
- Fossil fuel-generated energy consumption reduction for new federal build-

ings and major renovations of federal buildings

- Loan guarantees for clean energy projects
- Incentive program for manufacturing advanced technology vehicles

Department of Health and Human Services

- Nutrient content claims, definition of the term “healthy”³³⁹
- FDA amendments to “Canned Tuna Standard of Identity”³⁴⁰
- Additional policy and regulatory revisions in response to the COVID-19 public health emergency; temporary increase in federal medical assistance percentage
- Salt: voluntary sodium reduction goals: target mean and upper bound concentrations for sodium in commercially processed, packaged, and prepared foods; guidance for industry
- Criteria for an expedited coverage pathway to provide Medicare beneficiaries with faster access to innovative and beneficial technologies³⁴¹
- Medical product “intended use” regulations describing the types of evidence relevant to determining whether a product is intended for use as a drug or device³⁴²
- Clinical Laboratory Improvement Amendments and Patient Protection and Affordable Care Act; additional policy and regulatory revisions in response to the COVID-19 public health emergency
- Medical devices; ear, nose and throat devices; establishment of over-the-counter hearing aids
- Requirements for additional traceability records for certain foods
- Requirements related to surprise billing (also departments of Labor and the Treasury and Office of Personnel Management)
- COVID-19 hoarding prevention under the Defense Production Act

- Frozen cherry pie: proposed revocation of a standard of identity and a standard of quality³⁴³
- Tobacco product standard for characterizing flavors in cigars
- Requirements for additional traceability records for certain foods
- General and plastic surgery devices: restricted sale, distribution, and use of sunlamp products
- Prohibition of sale of tobacco products to persons younger than 21 years of age
- Medicaid programs reducing provider and patient burden and promoting patients' electronic access to health information
- Hospice wage index, payment rate update, and quality reporting requirements
- Revisions to payment policies under the Physician Fee Schedule and other revisions to Medicare Part B
- Modernization and clarification of physician self-referral regulations
- Hospital inpatient prospective payment systems for acute care hospitals, the Long-Term Care Hospital Prospective Payment System, and FY 2021 rates
- Sunscreen drug products for over-the-counter human use guidance
- FDA "Medical Device Quality System" rules to "amend the device current good manufacturing practice requirements (CGMP) of the Quality System (QS) Regulation" by incorporating an international standard specific for device quality management systems³⁴⁴
- Rules deeming electronic cigarettes addictive and regulating them and components under the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, and being subjected to warning labels and sale restrictions and maximum nicotine levels³⁴⁵
- Ban on menthol cigarettes and prohibition of flavored cigars³⁴⁶
- Required warnings for cigarette packages and advertisements
- Food labeling: serving sizes of foods that can reasonably be consumed at one eating occasion; dual-column labeling; modification of certain reference amounts customarily consumed
- Nutrition labeling for food sold in vending machines and for restaurant menu items
- Food labeling: trans-fatty acids in nutrition labeling, nutrient content claims, and health claims
- Rule on safety and effectiveness of consumer antibacterial soaps ("Topical Antimicrobial Drug Products for Over-the-Counter Human Use");³⁴⁷ consumer antiseptics
- Federal policy for the protection of human subjects
- "Nonclinical Considerations for Mitigating Nonhuman Primate Supply Constraints Arising from the COVID-19 Pandemic; Guidance for Industry; Availability"³⁴⁸
- Criteria for determining whether a drug is considered usually self-administered
- Substances prohibited from use in animal food or feed; registration of food and animal feed facilities
- Updated standards for labeling of pet food
- Sanitary transportation of human and animal food
- Focused mitigation strategies to protect food against intentional adulteration
- Produce safety regulation
- Mammography quality standards
- Fire safety and sprinkler requirements for long-term care facilities
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Rule on comprehensive care for joint replacement
- Medication-assisted treatment for opioid use disorders reporting requirements
- Patient Protection and Affordable Care Act; standards related to essential health benefits, actuarial value, and accreditation; Medicaid, exchanges, and children's health insurance programs: eligibility, appeals, and other provisions
- Revisions to promote patients' electronic access to health care information and improve interoperability for Medicare-

- and Medicaid-participating providers and suppliers
- Good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Good manufacturing practice regulations for finished pharmaceuticals
- Prior authorization process for certain durable medical equipment, prosthetic, orthotics, and supplies
- Barcode label requirements for human drug products and blood

Department of Homeland Security

- Computer-Assisted Passenger Prescreening System, providing government access to passenger reservation information
- “REAL ID”: minimum standards for driver’s licenses and identification cards acceptable by federal agencies for official purposes; mobile driver’s licenses³⁴⁹
- Removal of H-4 dependent spouses from the classes of aliens eligible for employment authorization
- Affidavit of support on behalf of immigrants
- Collection and use of biometrics by U.S. Citizenship and Immigration Services; collection of biometric data from aliens upon entry to and exit from the United States
- Western Hemisphere Travel Initiative: noncompliant traveler fee
- Air cargo advance screening
- Visa Security Program fee
- Establishment of a fixed time period of admission and an extension of stay procedure for nonimmigrant academic students, exchange visitors, and representatives of foreign information media
- Cost of assistance estimates in the disaster declaration process for the Public Assistance Program
- Emergency Management Priorities and Allocations System
- COVID-19 hoarding prevention under the Defense Production Act
- Passenger screening using advanced body imaging technology

- Importer security filing and additional carrier requirements
- Air cargo screening and inspection of towing vessels

Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards regarding location of smoke alarms
- Institution of smoke-free public housing³⁵⁰
- Regulation of Fannie Mae and Freddie Mac on housing goals
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Establishment of a more effective fair-market rent system; use of small-area fair-market rents in Housing Choice Voucher Program (modification of income and rent determinations in public and assisted housing)

Department of the Interior

- Revised requirements for well plugging and platform decommissioning
- Revisions to the requirements for exploratory drilling on the Arctic Outer Continental Shelf
- Endangered and threatened wildlife and plants: removal of the gray wolf from the List of Endangered and Threatened Wildlife
- Increased safety measures for oil and gas operations and exploratory drilling on the Arctic Outer Continental Shelf³⁵¹
- Blowout prevention for offshore oil and gas operations

Department of Justice

- Regulation of “ghost guns” and build-your-own kits: “Definition of ‘Frame or Receiver’ and Identification of Firearms”³⁵²
- Nondiscrimination on the basis of disability: accessibility of Web information and services of state and local governments

- Regulation of telepharmacy practice³⁵³
- National standards to prevent, detect, and respond to prison rape
- Retail sales of scheduled listed chemical products

Department of Labor

- Employee Benefits Security Administration's "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights"³⁵⁴
- Improvement of tracking of workplace injuries and illnesses (amending Occupational Safety and Health Administration occupational injury and illness electronic recordkeeping requirements)³⁵⁵
- Recission of Trump-era "Apprenticeship Programs, Labor Standards for Registration"³⁵⁶
- Reclassification of independent contractors as employees³⁵⁷
- "Nondisplacement of Qualified Workers under Service Contracts"³⁵⁸
- Conflict-of-interest in financial investment advice
- "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings"³⁵⁹
- Tip regulations under the Fair Labor Standards Act
- Independent contractor status under the Fair Labor Standards Act
- Overtime rule: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees"³⁶⁰
- Establishment of a minimum wage for contractors (Executive Order 13658)
- Establishment of paid sick leave for businesses that contract with the federal government (in response to Executive Order 13706)³⁶¹
- Walking-working surfaces and personal fall protection systems (slips, trips, and fall prevention)³⁶²
- Hearing conservation program for construction workers
- Rules regarding confined spaces in construction: preventing suffocation and explosions

- Reinforced concrete in construction
- Prevention of back-over injuries and fatalities
- Cranes and derricks
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Combustible dust
- Injury and illness prevention program
- Application of the Fair Labor Standards Act to domestic service
- Occupational exposure to styrene crystalline silica, tuberculosis, and beryllium³⁶³
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Group health plans and health insurance issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act
- Process safety management and prevention of major chemical accidents

Department of Transportation

- "Guidance Regarding Interpretation of Unfair and Deceptive Practices"³⁶⁴
- "Seat Belts in Limousines" (mandated in the Bipartisan Infrastructure Law)³⁶⁵
- Advanced impaired driving technology
- Enhancement of transparency of airline ancillary service fees³⁶⁶
- "Accessible Lavatories on Single-Aisle Aircraft: Part 2" (toilets in new single-aisle aircraft be large enough for a passenger with a disability)³⁶⁷
- National Highway Traffic Safety Administration (NHTSA) "Notice" on "Cybersecurity Best Practices for the Safety of Modern Vehicles"³⁶⁸
- NHTSA automated vehicles "occupant protection" safety standards for occupants regardless of internal design differences from traditional vehicles³⁶⁹
- NHTSA allowance for certification of adaptive driving beam headlamps to "permit this technology and establish performance requirements for these systems to ensure that they operate safely"³⁷⁰

- Quiet car rule; minimum sound requirements for hybrid and electric vehicles³⁷¹
- Electronic logging device revisions (hours of service, rest, and sleep for truck drivers)³⁷²
- “Unique Electronic Identification of Commercial Motor Vehicles”³⁷³
- Refunding of fees for delayed checked bags and ancillary services that are not provided³⁷⁴
- Federal Aviation Administration rule on operation and certification of drones and near critical infrastructure facilities³⁷⁵ (discretionary waivers³⁷⁶)
- Flight attendant work-hour limitations and rest period requirements³⁷⁷
- NHTSA Federal Motor Vehicle Safety Standard 150: vehicle-to-vehicle communication
- Rear seat belt reminder system
- Retroreflective tape and underride guards for single-unit trucks
- Medium and heavy-duty fuel efficiency standards
- Establishment of side-impact performance requirements for child restraint systems
- Corporate Average Fuel Economy standard civil penalties
- Safer Affordable Fuel-Efficient Vehicles Rules for passenger cars and light trucks
- High-Speed Intercity Passenger Rail Program; Buy America program requirements
- Federal Motor Carrier Safety Administration and NHTSA rule on speed limiters for commercial vehicles and electronic stability control systems for heavy vehicles
- “Train Crew Size Safety Requirements”³⁷⁸
- NHTSA rule on lighting and marking on agricultural equipment³⁷⁹
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple-trailer combination trucks³⁸⁰
- Requirement for installation of seat belts on motor coaches; rear center lap and shoulder belt requirement; seat belt reminder system
- Carrier safety fitness determination
- Standard for rearview mirrors
- Commercial driver’s license drug and alcohol clearinghouse
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and side-impact protection
- Federal Railroad Administration passenger equipment safety standards amendments
- Rear-impact guards and others safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Registration and training for operators of propane tank-filling equipment
- Monitoring systems for improved tire safety and tire pressure
- Hazardous materials: transportation of lithium batteries
- Pipeline and Hazardous Materials Safety Administration rule on safety of onshore gas gathering pipelines³⁸¹

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- New grape variety names approved for American wines³⁸²
- Numerous Small Business Administration Business Loan Program changes and provisions related to loan forgiveness; Paycheck Protection Program
- Provisions pertaining to certain transactions by foreign persons involving real estate in the United States
- Financial Crimes Enforcement Network “Beneficial Ownership Information Reporting Requirements” consisting of anti-money laundering program and suspicious activity report filing requirements for investment advisers and certain investments in the United States by foreign persons,³⁸³ and provisions pertaining to cross-border electronic transmittals of funds
- Prohibitions and restrictions on proprietary trading and certain interests

in, and relationships with, hedge funds and private equity funds

- Margin and capital requirements for covered swap entities
- Regulatory capital rule: temporary exclusion of U.S. Treasury securities and deposits at Federal Reserve Banks from the supplementary leverage ratio
- Regulatory capital rule: Paycheck Protection Program lending facility and Paycheck Protection Program loans
- Assessment of fees for large bank-holding companies and other financial entities supervised by the Federal Reserve to fund the Financial Research Fund (which includes the Financial Stability Oversight Council)
- Troubled Asset Relief Program standards for compensation and corporate governance

Architectural and Transportation Barriers Compliance Board

- Americans with Disabilities Act accessibility guidelines for passenger vessels
- Information and communication technology standards and guidelines

Consumer Financial Protection Bureau

- Proposed rule regulating business practices on payday and vehicle title loans³⁸⁴

Commodity Futures Trading Commission and Securities and Exchange Commission

- “Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers”³⁸⁵

Securities and Exchange Commission

- Proposal “to remove the reference to credit ratings, substitute alternative mea-

sures of creditworthiness, and impose related recordkeeping obligations in certain instances”³⁸⁶

Consumer Product Safety Commission

- Safety standard for crib mattresses³⁸⁷
- Rulemaking on clothing storage units owing to “an unreasonable risk of injury and death, particularly to children, associated with clothing storage units (CSUs) tipping over”³⁸⁸
- Regulatory options for table saws
- Petition for rulemaking to eliminate accessible cords on window covering products
- Flammability standards for upholstered furniture and bedclothes
- Testing, certification, and labeling of certain consumer products
- Banning of certain backyard play sets
- Product registration cards for products intended for children
- Safety standard for children’s folding chairs and stools

Environmental Protection Agency

- Post-Trump mercury rule restoration³⁸⁹
- Control of air pollution from aircraft engines: emission standards and test procedures for civil subsonic jet airplanes, to parallel U.S. policies with those of the UN International Civil Aviation Organization³⁹⁰
- National Emission Standards for Hazardous Air Pollutants (NESHAP): primary copper smelting residual risk and technology review and primary copper smelting area source technology review³⁹¹
- Control of air pollution from new motor vehicles: heavy-duty engine and vehicle standards;³⁹² restrictions on certain uses of hydrofluorocarbons under Subsection (i) of the American Innovation and Manufacturing Act Multi-pollutant emissions standards for model years 2027 and later light-duty and medium-duty vehicles

- NESHAP: coal- and oil-fired electric utility steam-generating units—review of the residual risk and technology review
- National Primary Drinking Water Regulations for lead and copper: regulatory revisions
- “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters”—amendments
- Review of dust-lead postabatement clearance levels
- Reclassification of major sources as area sources under Section 112 of the Clean Air Act
- Oil and natural gas sector: emission standards for new, reconstructed, and modified sources reconsideration
- Performance standards for new residential wood heaters
- Model trading rules for greenhouse gas emissions from electric utility generating plants constructed before January 7, 2014
- Financial responsibility requirements under Comprehensive Environmental Response, Compensation, and Liability Act Section 108(b) for classes of facilities in the hard-rock mining industry
- Clean air visibility; ozone implementation rules
- Effluent limitations guidelines and standards for the steam electric power generating point source category
- Revision of stormwater regulations to address discharges from developed sites
- Formaldehyde emissions standards for composite wood products
- National emission standards for hazardous air pollutants from certain reciprocating internal combustion engines and auto paints
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide
- Revision of underground storage tank regulations: revisions to existing requirements and new requirements for secondary containment and operator training
- Rulemakings regarding lead-based paint and the Lead Renovation, Repair, and Painting Program for public and commercial buildings
- Standards for cooling water intake structures
- Standards of performance for municipal solid waste landfills
- Control of emissions from nonroad spark-ignition engines, new locomotives, and new marine diesel engines

Federal Communications Commission

- Implementation of the Infrastructure Investment and Jobs Act: prevention and elimination of digital discrimination³⁹³
- Targeting and elimination of unlawful text messages (“Do not originate” on text messages)³⁹⁴
- Establishment of the Digital Opportunity Data Collection³⁹⁵
- Protection from national security threats to the communications supply chain through Federal Communications Commission (FCC) programs³⁹⁶
- Rural telehealth: allocation of resources for rural health care providers to access broadband and telecommunications services³⁹⁷
- Acceleration of wireline and wireless broadband deployment by removing barriers to infrastructure investment by “better align[ing] financial incentives of utilities and attachers with respect to pole replacements”³⁹⁸
- Protection of the privacy of customers of broadband and other telecommunications services³⁹⁹
- Allocation of spectrum for nonfederal commercial space launch operations⁴⁰⁰
- Expansion of the economic and innovation opportunities of spectrum through incentive auctions
- Processing of applications in the direct broadcast satellite (DBS) service; feasibility of reduced orbital spacing for provision of DBS service in the United States

- Restoration of Internet freedom; protection and promotion of the open Internet
- Broadband for passengers aboard aircraft
- Satellite broadcasting signal carriage requirements
- Robocall mitigation strategies⁴⁰¹

Federal Acquisition Regulation

- Disclosure of greenhouse gas emissions and climate-related financial risk⁴⁰²
- Cyberthreat and incident reporting and information sharing
- Prohibition on contracting with entities using certain telecommunications and video surveillance services or equipment

Federal Deposit Insurance Corporation

- Standardized approach for risk-weighted assets
- Margin and capital requirements for covered swap entities

Federal Energy Regulatory Commission

- Funding and planning of major transmission projects: “Building for the Future through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection”⁴⁰³
- Critical infrastructure protection reliability standards

Federal Permit Improvement Steering Council

- Addition of land revitalization as a sector of projects eligible for coverage under Title 41 of the Fixing America’s Surface Transportation Act

Federal Reserve System

- Exception of certain guaranteed loans made (executive officers, directors, and principal shareholders of member banks) under the Small Business Administration’s Paycheck Protection Program from the requirements of the Federal Reserve Act and the associated provisions of the Board’s Regulation O⁴⁰⁴

Federal Trade Commission

- Amendments to Energy Labeling Rule that “requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models”⁴⁰⁵

National Transportation Safety Board

- Commercial space tourism regulations⁴⁰⁶

Office of Personnel Management

- Multistate exchanges: implementations for Affordable Care Act provisions
- Paid parental leave and miscellaneous provisions of the Family and Medical Leave Act

Surface Transportation Board

- Reciprocal switching in rail service⁴⁰⁷

Federal Regulations Affecting Small Business

Given discrepancies seen in the final rule counts, the overall counts of both small business rules and significant small business rules could also be understated. Congress should inquire into counting practices as part of its needed regulatory reforms.⁴⁰⁸

Assessment of small business burdens are rooted in the Regulatory Flexibility Act (RFA), which directs federal agencies to consider their rules' effects on small entities.⁴⁰⁹ Figure 22 depicts the number of rules requiring such annual regulatory flexibility analysis that are acknowledged in the Unified Agenda. Figure 22 also depicts the number of other rules anticipated by agencies to affect small businesses, but that presumably do not rise to the level of requiring a regulatory flexibility analysis.

The overall number of rules acknowledged to significantly affect small business dropped substantially between 2012 and 2013 during the Obama administration, likely reflecting election-related reporting changes. They dropped substantially again under Trump, despite the count being amplified by some rules aimed at rollback. Under Biden, the tally has topped 700 again in 2022, but with no deregulatory designation mitigating the rise.

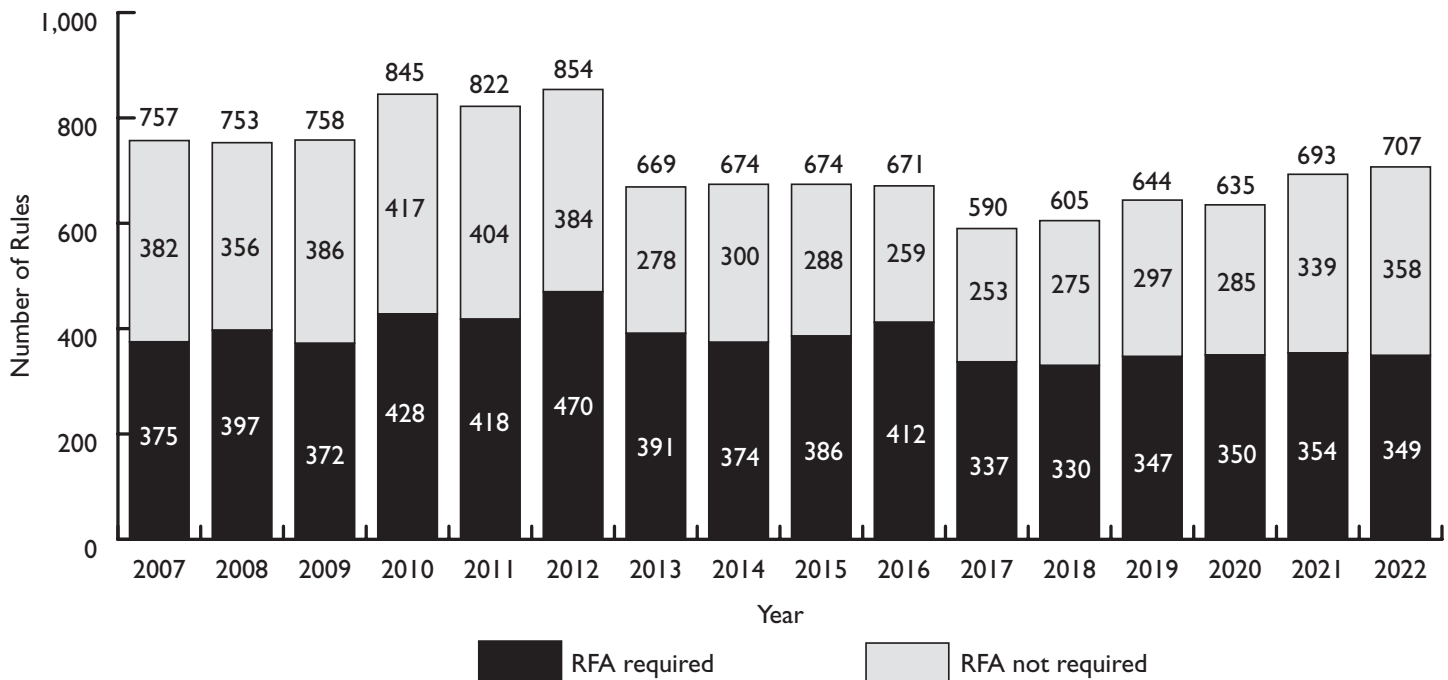
As Figure 22 shows, according to the fall 2022 Unified Agenda, at the end of 2022, of the 707 rules affecting small business, 349 required RFA analysis and another 358 were deemed by agencies to affect small business but not rise to the level of requiring RFA analysis.⁴¹⁰ Under Trump in 2020, there were 635 rules affecting small business, of which 83 were deemed deregulatory. Earlier deregulatory

counts for small business rules under Trump were 102 in both 2019 and 2018, and 83 in 2017. Biden's increase in small business rules over Trump in 2020 was 11 percent. Netting out Trump's deregulatory rules affecting small business, Biden's increase in rules affecting small business since Trump is 28 percent.

There had been 671 rules affecting small business in Obama's final year of 2016. The number of rules with small-business impacts during the Obama administration in some years exceeded 800. The average number of rules affecting small business during Obama's eight years and requiring an RFA was 406, exceeding George W. Bush's eight-year average of 377. Trump's average annual number of rules affecting small business was lower than either at 341, dozens of which were also deemed deregulatory each year. Biden's two-year average is 351.5.

Table 8 breaks out the 2022 fall Unified Agenda's 707 rules affecting small business by department, agency, and commission. The top five—the Federal Communications Commission; the departments of Commerce, Health and Human Services, and the Treasury; and the multiagency federal acquisition rules—are the standouts, accounting for 334 rules, or 42 percent of the total 707 rules affecting small business. The FCC alone contributes 67 long-term rules deemed to require RFA analysis, whereas the IRS's contributions to Treasury rules is a noticeable component. The overall proportion of total rules affecting small business in Table 8 stands at 19 percent but varies widely among agencies. (For the numbers of rules in the Unified Agenda affecting small business

Figure 22. Rules in the Pipeline Affecting Small Business, 2007–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, various years.

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Fall 2022

	Total Rules	Number Affecting Small Business							Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Agriculture	168	15	2	7	6	3	3	36	21.4%	
Dept. of Commerce	272	20	8	2	33	8	1	72	26.5%	72
Dept. of Defense	186	3			28	3	3	37	19.9%	
Dept. of Education	47	2	1					3	6.4%	
Dept. of Energy	133	4	6		3	1		14	10.5%	
Dept. of Health and Human Services	236	21	6	5	31	1	6	70	29.7%	70
Dept. of Homeland Security	143	10		1	1		3	15	10.5%	
Dept. of Housing and Urban Development	59							0	0.0%	
Dept. of the Interior	350	8	1	2	15	1		27	7.7%	
Dept. of Justice	127				20	1	1	22	17.3%	
Dept. of Labor	103	10	2		5	1	4	22	21.4%	
Dept. of State	54				13	1	3	17	31.5%	
Dept. of Transportation	306	7	2	7	12	1	9	38	12.4%	
Dept. of the Treasury	337	9	6	4	39	2	6	66	19.6%	66

	Total Rules	Number Affecting Small Business							Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Veterans Affairs	93							0	0.0%	
Agency for International Development	15				1			1	6.7%	
Architectural and Transportation Barriers Compliance Board	5							0	0.0%	
CPBSD*	4							0	0.0%	
Commodity Futures Trading Commission	24							0	0.0%	
Consumer Financial Protection Bureau	11	3				1		4	36.4%	
Consumer Product Safety Commission	25	4	1	1				6	24.0%	
Corporation for National and Community Service	14							0	0.0%	
Council of Inspector General on Integrity and Efficiency	0							0	0.0%	
Council on Environmental Quality	3							0	0.0%	
Court Seives/Offender Supervision, DC	7							0	0.0%	
Environmental Protection Agency	212	9		3	13	1	3	29	13.7%	
Federal Acquisition Regulation	57	34	6	2	9		1	52	91.2%	52
Farm Credit Administration	18							0	0.0%	
Federal Communications Commission	92		3	67		1	3	74	80.4%	74
Federal Deposit Insurance Corporation	22				1	2		3	13.6%	
Federal Energy Regulatory Commission	23							0	0.0%	
Federal Housing Finance Agency	15							0	0.0%	
Federal Maritime Commission	5							0	0.0%	
Federal Mediation and Conciliation Service	6				2	1		3	50.0%	
Federal Mine Safety and Health Review Commission	1							0	0.0%	
Federal Permitting Improvement Steering Committee	2				1			1	50.0%	
Federal Reserve System	32	1	1					2	6.3%	
Federal Trade Commission	25				22		1	23	92.0%	
General Services Administration	38	13	1	1	15	4		34	89.5%	
Institute of Museum and Library Services	1							0	0.0%	
Inter-American Foundation	2							0	0.0%	

	Total Rules	Number Affecting Small Business							Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
National Aeronautics and Space Administration	5							0	0.0%	
National Archives and Records Administration	12							0	0.0%	
National Credit Union Administration	30							0	0.0%	
National Endowment for the Arts	5				2			2	40.0%	
National Endowment for the Humanities	3							0	0.0%	
National Indian Gaming Commission	16						2	2	12.5%	
National Labor Relations Board	4	1						1	25.0%	
National Mediation Board	1							0	0.0%	
National Science Foundation	5									
National Transportation Safety Board	10							0	0.0%	
Nuclear Regulatory Commission	58	2	1	2	1			6	60.0%	
Office of Government Ethics	11							0	0.0%	
Office of Management and Budget	8							0	0.0%	
Office of National Drug Control Policy	1							0	0.0%	
Office of Personnel Management	40		1					1	100.0%	
Office of the Intellectual Property and Enforcement Coordinator	1							0	0.0%	
Peace Corps	4							0	0.0%	
Pension Benefit Guaranty Corporation	11							0	0.0%	
Postal Regulatory Commission	8							0	0.0%	
Railroad Retirement Board	4							0	0.0%	
Securities and Exchange Commission	65	7	3		1			11	16.9%	
Small Business Administration	75	8	2			1		11	14.7%	
Social Security Administration	25				1			1	4.0%	
Surface Transportation Board	11			1				1	9.1%	
Tennessee Valley Authority	0							0	0.0%	
U.S. Agency for Global Media	3							0	0.0%	
U.S. Commission on Civil Rights	1							0	0.0%	
TOTAL	3,690	191	53	105	275	34	49	707	19.2%	334
		349			358					47% of total

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," and from online edition at <http://www.reginfo.gov>.

RFA = regulatory flexibility analysis; L-T = long term.

* Committee for Purchase from People Who Are Blind or Severely Disabled.

Box 3. Federal Workplace Regulations Affecting Growing Businesses

Assumes nonunion, nongovernment contractor, with interstate operations and a basic employee benefits package. Includes general workforce-related regulation only. Omitted are (a) categories such as environmental and consumer product safety regulations and (b) regulations applying to specific types of businesses, such as mining, farming, trucking, or financial firms.

1 EMPLOYEE

- Fair Labor Standards Act (overtime and minimum wage)
- Social Security matching and deposits
- Medicare, Federal Insurance Contributions Act
- Military Selective Service Act (allowing 90 days' leave for reservists, rehiring of discharged veterans)
- Equal Pay Act (no sex discrimination in wages)
- Immigration Reform Act (eligibility that must be documented)
- Federal Unemployment Tax Act (unemployment compensation)
- Employee Retirement Income Security Act (standards for pension and benefit plans)
- Occupational Safety and Health Act
- Polygraph Protection Act

4 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Immigration Reform Act (no discrimination with regard to national origin, citizenship, or intention to obtain citizenship)

15 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Civil Rights Act Title VII (no discrimination with regard to race, color, national origin, religion, or sex; pregnancy-related protections; record keeping)

- Americans with Disabilities Act (no discrimination, reasonable accommodations)

20 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Age Discrimination Act (no discrimination on the basis of age against those 40 and older)
- Older Worker Benefit Protection Act (benefits for older workers to be commensurate with younger workers)
- Consolidated Omnibus Budget Reconciliation Act (continuation of medical benefits for up to 18 months upon termination)

25 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Health Maintenance Organization (HMO) Act (HMO option required)
- Veterans' Reemployment Act (reemployment for persons returning from active, reserve, or National Guard duty)

50 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Family and Medical Leave Act (12 weeks of unpaid leave for care of newborn or ill family member)

100 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Worker Adjustment and Retraining Notification Act (60-day written notice of plant closing)—Civil Rights Act (annual EEO-1 form)

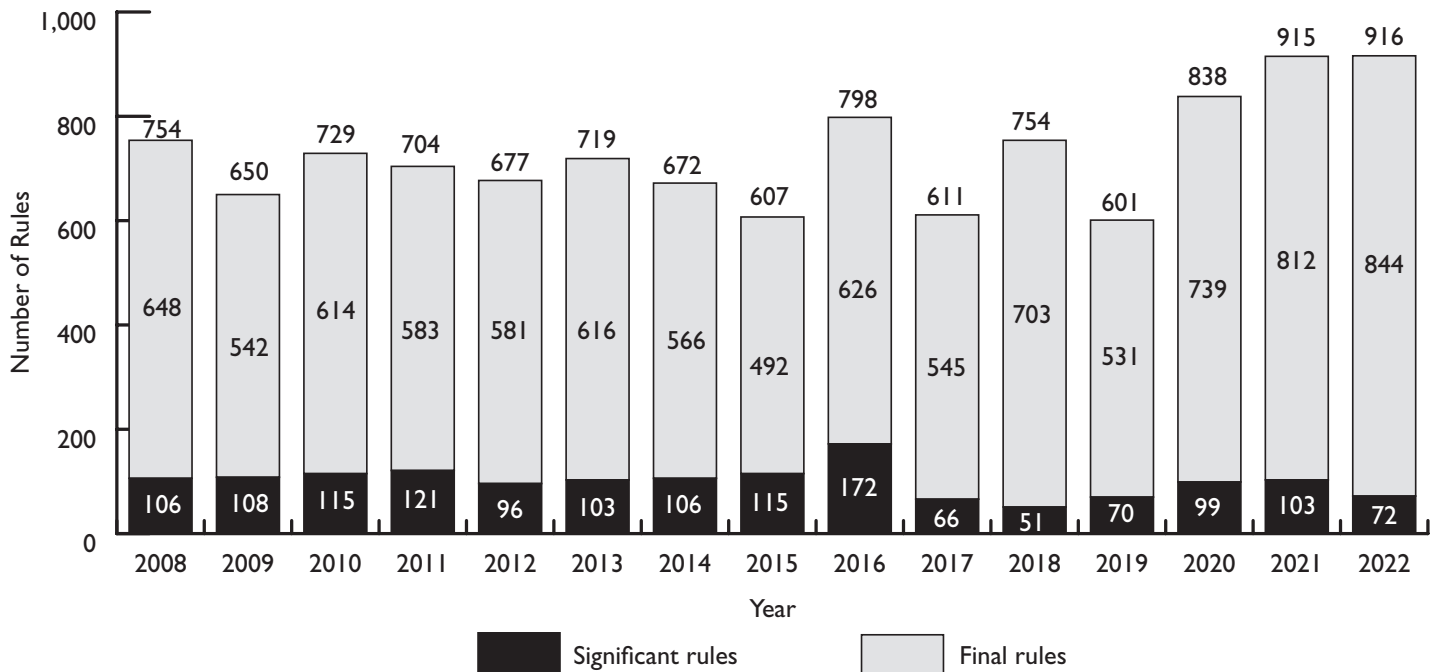
broken down by department and agency for fall Agenda editions since 1999–2020, see Appendix: Historical Tables, Part H.)

As a comparison with the fall Unified Agenda snapshots, Figure 23 depicts total completed final rules and the significant subset of them in the *Federal Register* deemed to affect small business by calendar year. The total count of 916 in 2022 stands well above both Trump's and Obama's. These tallies may fluctuate in the National Archives database, and subsequent editions of this report will reflect that, but these new heights are note-

worthy and likewise indicative of overall regulation levels. If policymakers are attempting to look ahead, proposed rules in the *Federal Register* affecting small business also bear close scrutiny in 2023. Those peaked at 804 in 2021, and despite dropping in 2022 have reattained Obama levels (Figure 24).

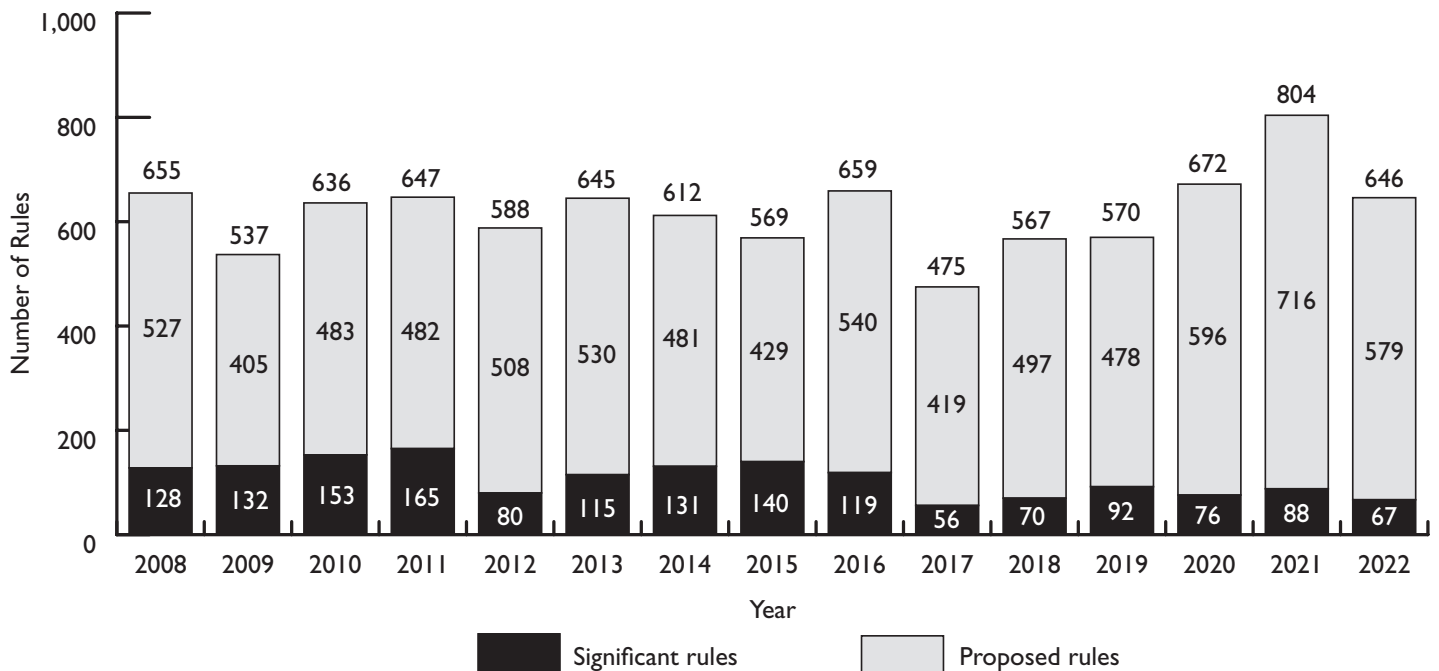
Box 3 depicts a partial list of the basic, non-sector-specific laws whose regulations affect small business, stacking as these firms grow. Post-COVID-19 legislation will play a role as well.

Figure 23. Number of Final Rules in the *Federal Register* Affecting Small Business, 2008–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions, and from online edition at <http://www.reginfo.gov>.

Figure 24. Number of Proposed Rules in the *Federal Register* Affecting Small Business, 2008–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions, and from online edition at <http://www.reginfo.gov>.

Federal Regulations Affecting State and Local Governments

Ten Thousand Commandments primarily emphasizes federal regulations imposed on the private sector. However, state and local officials' complaints over federal mandates' overriding their own priorities resulted in the Unfunded Mandates Act of 1995. That law requires the Congressional Budget Office to produce cost estimates for mandates affecting state, local, and tribal governments above the then threshold of \$50 million.⁴¹¹

Pandemic and post-pandemic spending and regulation affecting small business, states, and localities may lead to a new alignment that again induces a reluctant Congress to pull back. Recent infrastructure and investment legislation have affected the relationship between the federal and state and local governments (not to mention with citizens themselves), very likely raising the saliency of federal encroachment on local roles, concerns, and prerogatives.

As Figure 25 shows, agencies report that 387 of the 3,690 rules in the fall 2022 Agenda pipeline will affect local governments, an increase of 50 percent over Trump's final year count of 258 (and 19 percent greater than Biden's own count in 2021). That includes all stages—active, completed, and long-term. In Trump's fall 2020 Agenda, 46 of 258 local actions were deemed deregulatory for Executive Order 13771 purposes across the active, completed, and long-term categories, which brings Biden's to 82 percent over Trump's net 212 local rules. Rules affecting local governments have not been this high since 2000.

Turning to the total number of regulatory actions affecting state governments, one finds 550, a 34 percent increase over Trump's tally of

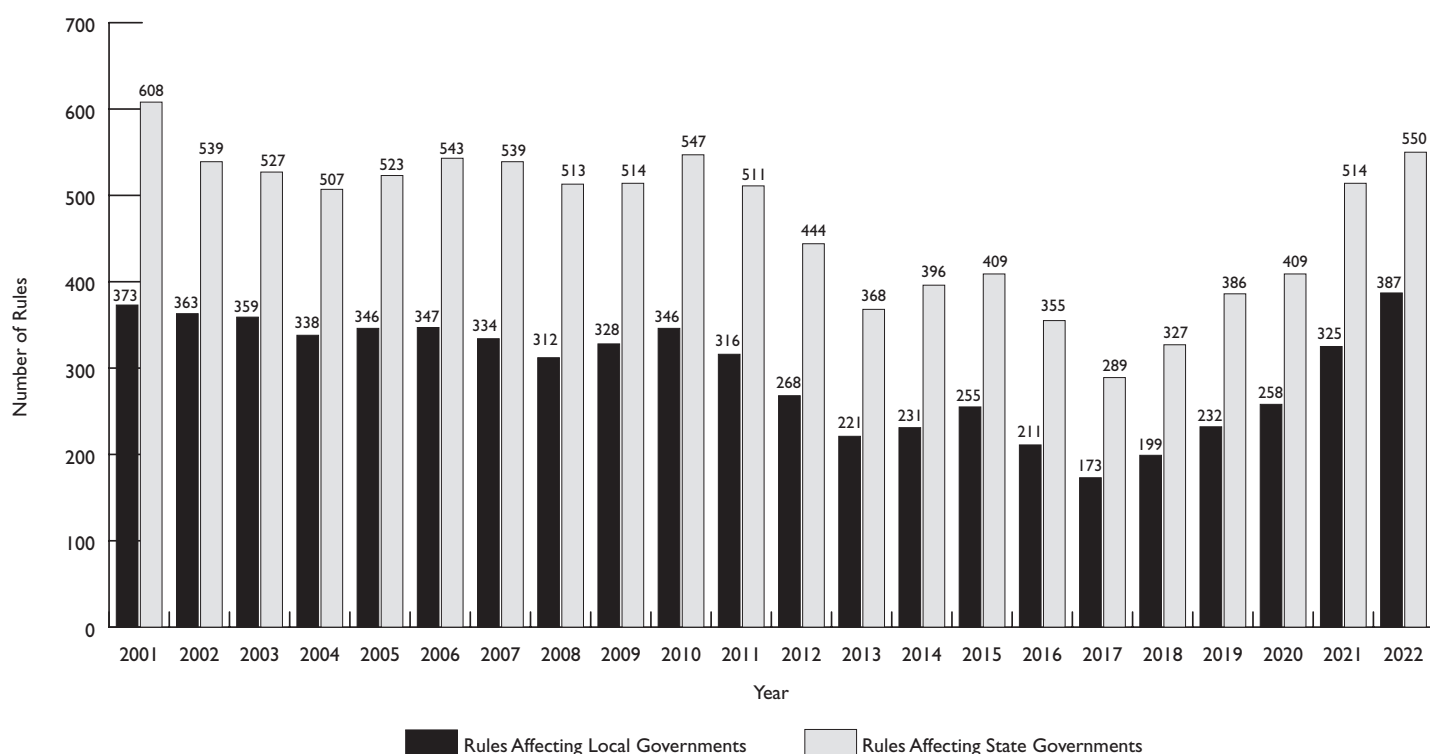
409 total actions affecting state governments in 2020, of which 72 were deemed deregulatory for Executive Order 13771 purposes, across the active, completed, and long-term categories. Rules affecting state governments have not been this high since 2001.

The number of rules affecting state and local governments has not reattained the pre-Unfunded Mandates Reform Act level depicted in 1994, but that appears to be where things are headed under the Biden administration. Particularly where legislation generates new unfunded mandates, state and local concerns could again influence regulatory reform measures.

These concerns, even pre-pandemic and even pre-Trump, had never dissipated. At the 2016 Legislative Summit of the National Conference of State Legislatures (NCSL), for example, a "Standing Committee on Budgets and Revenue" issued a resolution: "The growth of federal mandates and other costs that the federal government imposes on states and localities is one of the most serious fiscal issues confronting state and local government officials."⁴¹² Even in that pre-pandemic era, the NCSL called for "reassessing" and "broadening" the 1995 Unfunded Mandates Reform Act. Meanwhile that same year, several state attorneys general wrote to House and Senate leadership expressing concerns over federal agencies' "failing to fully consider the effect of their regulations on States and state law," and issued an appeal for strengthening the Administrative Procedure Act.⁴¹³

CBO reports that between 2006 and 2019, 190 laws were passed that imposed 420 intergovernmental mandates on states and lo-

Figure 25. Rules Affecting State and Local Governments, 2001–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions, and from online edition at <http://www.reginfo.gov>.

calities.⁴¹⁴ Ending before 2020, this depiction does not cover pandemic and post-pandemic legislation, nor regulatory mandates that can come from agencies acting unilaterally. According to this official CBO data, while most do inflict some costs, few of the mandates through 2019 exceed the statutory threshold for requiring official estimates. This threshold was \$50 million over a mandate’s first five years, and \$77 million now.

However, the Unfunded Mandates Reform Act is not applicable to many rules and programs,⁴¹⁵ which could be another impetus for reform. Of the 2,651 active rules in the fall 2022 Agenda, for example, only three acknowledge unfunded mandates on state, local, or tribal governments. Two are related to tobacco standards for flavoring in cigars and cigarettes, and one is on health-related electronic signatures certification.

Among 443 completed actions, only EPA’s amendments on “National Emission Stan-

dards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters” is acknowledged as an unfunded mandate. There are only two long-term actions acknowledged to impose unfunded mandates: (a) drug labeling barcode requirements; and (b) the Department of Labor’s ongoing pursuit of “COVID-19 Vaccination and Testing Emergency Temporary Standard” as a proposed rule, in defiance of a Supreme Court stay of its actions.

The Unified Agenda does recognize and report on a few additional unfunded mandates on the private sector, but not many. There are only 13 active, 5 completed, and 4 long-term rules in the pipeline. These are likely undercounts. Mandated agency disclosures are a mess, the same as many other regulatory cost and impact disclosures. Rectifying the situation could be part of the 118th Congress’s regulatory liberalization agenda.

Government Accountability Office

Database on Regulations

The federal government's reports and databases on regulations serve different purposes:

- The *Federal Register* details and depicts the aggregate number of proposed and final rules—both those that affect the private sector and those that deal with internal government procedures or programs—and numerous notices and presidential documents.
- The Unified Agenda presents agency regulatory priorities and provides details about the number of rules at various stages in the regulatory pipeline, rules with economically significant effects, and rules affecting small businesses and state and local governments.

The 1996 Congressional Review Act is intended to increase rulemaking accountability. It requires that agencies submit rules to both houses of Congress and to the Government Accountability Office (GAO), and the GAO submit reports to Congress on the major ones—those with annual estimated costs of \$100 million or more.⁴¹⁶

Owing to such “Reports on Major Rules,” which are prepared and maintained by the GAO in an online database, one can more readily observe (a) which of the thousands of final rules that agencies issue each year are major and (b) which departments and agencies are producing the major rules.⁴¹⁷ However, many final rules are not being properly submitted to the GAO and to Congress as required under the CRA.⁴¹⁸

Major rules can add burdens, reduce them, delay their implementation, or set rates and standards for major government programs

like Medicaid. Major guidance documents are also subject to the CRA, but are rarely presented to the GAO or to Congress.

The CRA provides Congress a window of 60 legislative days in which to review a received rule and pass a resolution of disapproval should it choose. Despite the issuance of thousands of rules since the CRA's passage, including dozens of major ones, before 2017 only one had been rejected (a Department of Labor rule on workplace repetitive-motion injuries in 2001). Currently, just 20 have been overturned by CRA procedures.⁴¹⁹

The GAO database contains 87,014 rules through December 31, 2022. By contrast, as noted, the *Federal Register* and National Archives repository indicate 99,429 rules since the CRA's passage through 2022. The database contains 1,784 reports on major rules through year-end 2022.⁴²⁰

Table 9 depicts the number of final major rule reports issued by the GAO regarding agency rules from 2003 through calendar year 2022.⁴²¹ With the caveat that the GAO database may not yet include all relevant rules from 2022, 76 major rules appear in the database for 2022 as of this writing. This number is likely to change because, for example, the tally of 98 recorded for 2021 has now increased in the current search to 129. Both of these counts are significant drops from the 140 seen in 2020,⁴²² which exceeded the prior high marks of 105 in 2016 and 100 in 2010 since GAO began these CRA-required tabulations.

There are several dozen GAO reports on major rules each year. Reporting on all as-

Table 9. Government Accountability Office Reports on Major Rules as Required by the Congressional Review Act, 2003–2022

	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Department of Agriculture	6	6	3	8	5	2	5	6	8	4	2	4	6	12	3	7	8	6	7	4
Department of Commerce	1		2		1	1				2				2	1	2			1	1
Department of Defense		1	2	1		2	2	2	1				4	4	6			1		
Department of Education	3	3	1	6		3	2	1	2	5	4	2	5	6	2	1	2			
Department of Energy	4		4		2	4	8	2	6	3	1	5	4	7	3	3				
Department of Health and Human Services	25	17	11	22	19	16	38	21	27	24	23	24	24	17	24	19	16	22	22	17
Department of Homeland Security	5	5	5	2	2		6	2	2	2	1	1	3	1	5	4	2	3	2	2
Department of Housing and Urban Development						1	2	1				2	1	1	2			1	1	
Department of Justice			1		2		1				1	1	3				1	1	1	
Department of Labor	3	8	4	2	1	2	8	1	3	3	3	2	6	1	2	3	3	1	1	
Department of the Interior	3	2		4	5	3	6	6	6	6	7	6	7	7	10	5	6	6	8	7
Department of State		1			1						1		1		1					
Department of Transportation	3	4	3	1	2		6	2	3	3	2	2	5	6	8	3	1	3	5	4
Department of the Treasury	6	11	16	13		2	5	7	7	3	2	1	4		1	1	1		1	
Department of Veterans Affairs	1	2	1	3	3	1	1	4	3	1	1	2	2	2		1		1		2
Architectural Barriers Compliance Board						1													1	
Commodity Futures Trading Commission							4		1	4	9	6								
Consumer Financial Protection Bureau	1	4				3	2	2		4	1	1								
Consumer Product Safety Commission												1	1				1			
Emergency Oil and Gas Loan Board																				
Emergency Steel Guarantee Loan Board																				
Environmental Protection Agency	3	3			1	2	7	8	2	3	5	6	8	3	9	2	8	3	7	3
Equal Employment Opportunity Commission												1								

	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Federal Acquisition Regulation						1														
Federal Communications Commission	3	6			2			1	1	1					6	2	1	1	4	2
Federal Deposit Insurance Corporation		2				1	2		1	1										
Federal Election Commission																				1
Federal Emergency Management Agency																				
Federal Energy Regulatory Commission	1																			
Federal Housing Finance Agency	4	3																		
Federal Reserve System					1	2	1	1	1	1		3	6	6	2				1	
Federal Trade Commission																		1		
National Credit Union Administration							1	1												
National Labor Relations Board												1								
Nuclear Regulatory Commission	1				2	1	1	1	1	3	1	1	1	2	1	2	1	1	1	1
Office of Management and Budget																				
Office of Personnel Management					1					1										1
Pension Benefit Guaranty Corporation	1	1							1											
Securities and Exchange Commission	2	12			5	1	10	6	5	5	3	8	9	7	7	5	3	4	2	5
Small Business Administration		6																	1	
Social Security Administration		1													2		2	1		
(Unallocated independent agencies)			37	18																
TOTAL	76	98	90	80	55	49	119	77	82	81	68	80	100	84	95	60	56	56	66	50
Controlling TOTALS (using 2022 GAO search)	76	98	140	78	54	71	105	71	87	65	76	78	100	93	84	55	53	68	54	49

Source: Table compiled by author from GAO at <https://www.gao.gov/legal/other-legal-work/congressional-review-act>. (Employing Search fields as follows: Rule Type/Major; Rule priority/Alt; and "Rule Effective Date" rather than "Date Received by GAO" to maximize total.)

Note: Like some counts in the Federal Register database, prior years' rule counts may change in subsequent years.

Table 10. Number of Significant and Major Rules

		Completed Economically Significant*	Major per GAO**	Major Per Unified Agenda***	Significant****
2016	Obama	83	105	96	486
2017	Trump	88	71	102	222
2018	Trump	35	54	43	201
2019	Trump	70	78	84	261
2020	Trump	97	140	133	462
2021	Biden	105	98	124	387
2022	Biden	89	76	103	265

* From Unified Agenda by (loosely) "fiscal" year; see Figure 20's completed economically significant rules.

** From GAO database by calendar year.

*** From Unified Agenda.

**** From Federal Register.gov advanced search of "significant" final rules; these may be found at www.tenthousandcommandments.com. These fluctuate in the database periodically.

pects of rulemaking can improve. The GAO counts are presented for context and completeness, despite fluctuations, to be able to usefully compare them with other metrics, such as the major rule and economically significant tallies found in the twice-yearly Unified Agenda, as well as significant rules in the *Federal Register*.

Several categories of large rules have a bewildering nomenclature encompassing such terms as rules, significant rules, major rules, economically significant rules, guidance, and more.⁴²³ For example, an economically significant rule is major, but a major rule is not necessarily economically significant. That means there should be fewer economically significant rules than major ones. Both economically significant and major rules qualify as significant. Table 10 depicts numbers of each category for the past seven years.

Note that some economically significant rule counts from the Unified Agenda periodically appear larger than the GAO's count of major or significant rules in some instances. The different explanations follow:

- Calendar and fiscal years do not align.
- Rules are not being reported to the GAO but are being noted at OMB.

- Independent agency rules may appear under different categorizations in various databases.
- Budget and transfer rules are reported differently.

Legislation or an executive order to systematize nomenclature could help bring greater clarity, reconcile recordkeeping across various government databases, and subject independent agencies to greater oversight by Congress and the public.

Regarding Table 9's GAO-based compilation, Obama issued 675 major rules, compared with George W. Bush's 492, both over eight years. This presentation covers calendar years, so Bush's eight years contain the final weeks of Clinton's presidency before Bush's inauguration, and Obama's first year includes the Bush administration's final weeks.

George W. Bush averaged more than 61 major rules annually during his eight years in office. Obama averaged slightly more than 84. Trump issued an average of almost 86 major rules annually, some of which were deregulatory. Biden's preliminary major rule total is 205, for an average of 103.

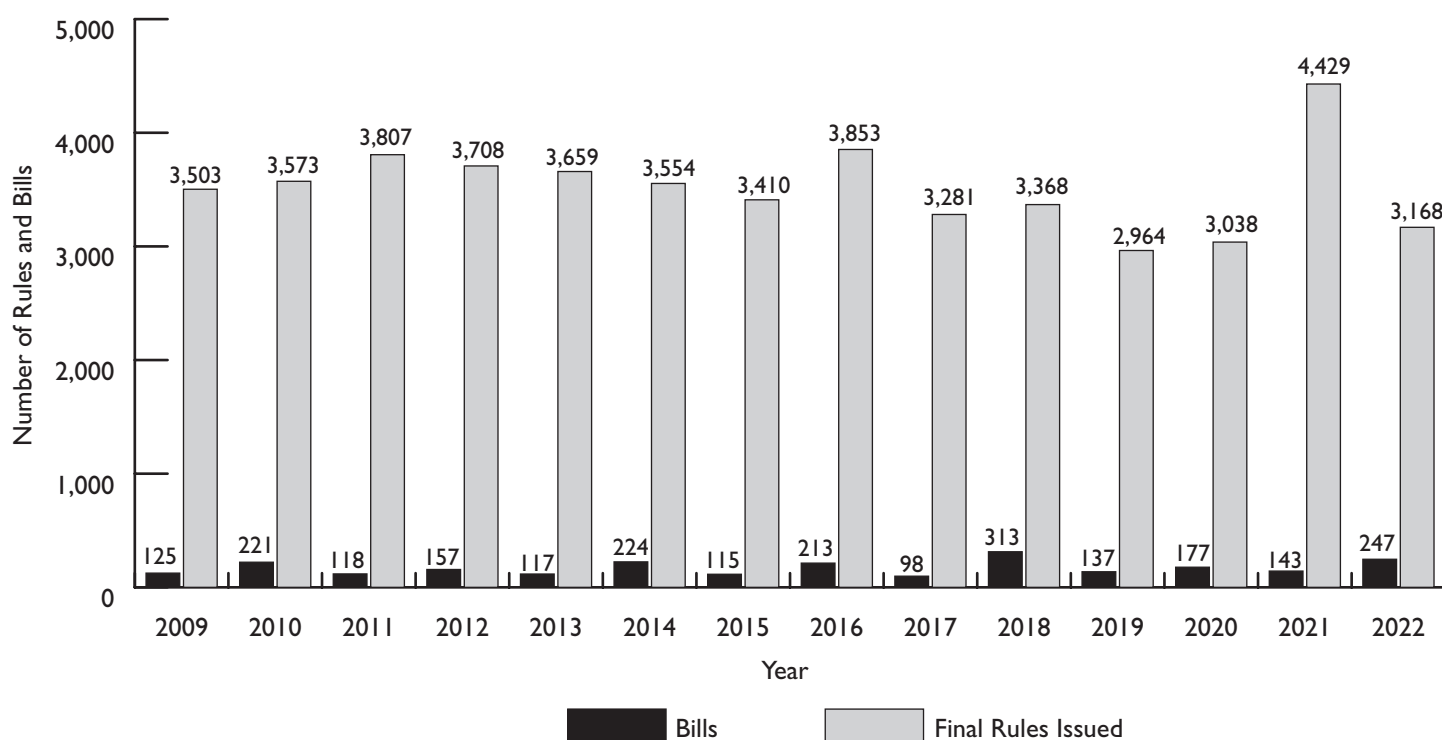
Regulation without Representation: The “Unconstitutionality Index” — 13 Rules for Every Law

Administrative agencies, not Congress, do most U.S. lawmaking, despite Article I of the Constitution stipulating otherwise.⁴²⁴ Congress is to blame here, as it routinely enacts weighty legislation that should be closely attended, then delegates substantial law-making power to agencies.

From an agency’s perspective, the primary measure of its productivity is the body of regulation it produces.⁴²⁵ That gives agencies ample incentive to expand turf by regulating even without an actual need for it.

The Unconstitutionality Index is the ratio of rules issued by agencies relative to laws passed by Congress and signed by the president during a calendar year. In calendar year 2022, federal regulatory agencies issued 3,168 final rules, compared with Congress’s passing 247 bills. In 2021, Congress passed 143 bills, and in 2020 it passed 177 bills.⁴²⁶ That means 13 rules were issued for every law passed in 2022, after 17 and 31 rules for every law in 2020 and 2021, respectively (see Figure 26).⁴²⁷

Figure 26. The Unconstitutionality Index, 2009–2022



Source: *Federal Register* data from National Archives and Records Administration and from Crews tabulation at <http://www.tenthousandcommandments.com>. Public Laws data compiled from Government Printing Office, Public and Private Laws at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>; and from National Archives, Previous Sessions: Public Law Numbers at <http://www.archives.gov/federal-register/laws/past/index.html>.

Numbers of rules and laws can vary for many reasons. A regulation in one year could be the result of legislation passed years prior, possibly under a different administration. The White House notes that the effects of recent infrastructure and inflation legislation will be expected to be felt in 2023.⁴²⁸

The Unconstitutionality Index provides useful context about the balance of power between the legislature and the executive branch. The average flow over the past decade has been 22 rules issued by federal agencies for every law passed by Congress.

Liberate to Stimulate: Framing an Agenda for Rightsizing Washington

It should be hard to enact bad law and regulation, not to get rid of them. A whole-of-government spending and regulatory agenda like the one happening now will require whole-of-liberty and whole-of-economy responses. In addition to dealing with a \$31 trillion national debt, Congress must address federal regulations affecting manufacturing, finance, energy, technology, the environment, small businesses, families, and state and local governments.

“Liberate to stimulate” campaigns would remove barriers to entrepreneurship and hiring by shuttering bureaucracies, eliminating unneeded rules and programs, and liberalizing wherever possible. Those tasks would reinforce debt and deficit reduction before the next economic shock sparks another surge of spending and regulation.

The restoration campaign needs new urgency in the wake of Biden’s rule. Regulatory reforms that rely on agencies’ policing themselves within the limited restraints of the Administrative Procedure Act were already inadequate. Now, other pressures must come to bear.

A future executive branch could surpass Trump’s streamlining, while a future Congress could take a cue from the mid-1990s’ bipartisan passage of the Unfunded Mandates Reform Act, Small Business Regulatory Enforcement Fairness Act, and the Congressional Review Act. These reforms happened because of pressure from governors and small businesses. Such agitations are likely to return in the wake of the past years’ legislative enactments. Congress should listen.

Policymakers ought not wait for the stars to align, but prepare now. Clearing out obsolete, decades-old statutes is a necessary task that requires laying a foundation.⁴²⁹ Congress should lay the groundwork to abolish, downsize, slash the budgets of, and deny appropriations to aggressive agencies, subagencies, and programs. It should also repeal or amend many of the enabling statutes that sustain the regulatory enterprise in the first place.

The Sherman and Clayton antitrust acts and antitrust apparatus should be repealed,⁴³⁰ along with the Federal Trade Commission and FCC Acts in their current form. OMB in progressive administrations protects regulation, rather than audits it. The overarching Administrative Procedure Act in the 21st century protects the administrative state and bureaucratic governance, rather than the norms of a limited constitutional republic. It is due for a hard reset.⁴³¹

Legislation must end crisis exploitation⁴³² and abuses of national emergency declarations⁴³³ with sweeping privatization and localization of all federal government functions. This approach should include addressing increasingly regulatory entitlement spending and the Defense Department’s regulatory ambitions in areas like climate.⁴³⁴

Perspective is key. Overdelegation to regulators is rampant and intolerable, but now a secondary concern. Administrative state reform cannot limit a government whose legislature is capable of transformations like the CARES Act, Families First Coronavirus Act, American Rescue Plan, Infrastructure Act, Innovation Act, and Inflation Act and

supplements them all with recurring debt limit increases.⁴³⁵

The 118th Congress can lay the groundwork for a systematic abolition campaign for statutes, agencies, and rules, as well as lesser moves, such as supervisory hearings on OMB's Office of Information and Regulatory Affairs and the pursuit of Biden's modernization order.⁴³⁶ Other oversight should prioritize preventing a progressive White House from weakening OMB's Circular A-4 guidance on preparing regulatory impact analyses.⁴³⁷

Regulatory impact analyses should have a disclaimer statement regarding any bias or exaggeration. Disclosure of unfunded mandates and of their significance is suspect and unaudited. Hearings should address what Christopher DeMuth and Michael Greve call "agencies of independent means," whereby some agencies insulate themselves from Congress's fiscal constraints by imposing fines and fees, effectively creating their own autonomous budgets and agendas.⁴³⁸ Hearings can also bring to light regulatory modernization initiatives in states, such as those of Virginia Governor Glenn Youngkin and the state's Office of Regulatory Management to impose regulatory cuts, expedite permitting, and increase cost analysis.⁴³⁹

Congress can take a page from Biden and act unilaterally to enforce the regulatory controls now illegally ignored, such as OMB's neglect of the aggregate and annual cost-benefit reports required by the Regulatory Right-to-Know Act, and the incomplete submission of rules and guidance to Congress and the GAO as required by the CRA.⁴⁴⁰ It should pass legislation requiring documentation of the reporting of covered rules to both the GAO and to Congress, for example, in the *Federal Register*, thereby improving the current incomplete presentation in the House and Senate communications that appear in the *Congressional Record*. Short of legislation, a committee or even one congressional office could call out rules that agencies neglected to report to the GAO or to the Hill, and publicize the yearslong delays in OMB's cost-benefit report and the Information Collection Budget.

Congress often relies on must-pass appropriations and reauthorizations to push through wish-list initiatives. The dedicated legislation it does pass, like the Affordable Care Act and Dodd-Frank financial reform law, often spawns thousands of pages of regulations.⁴⁴¹

The alternative is for Congress to deny appropriations for carrying out regulatory programs. That is, Congress can use the power normally deployed for expanding regulation to streamline it instead. The ultimate funding lever is the debt ceiling, which may be among the last institutions capable of forcing downsizing.⁴⁴²

Congress has already reintroduced several bills to restore some democratic accountability over unelected agency rule, some now waiting in the wings for more than two decades. One reform would have Congress address overdelegation by voting to approve major regulations before they can become binding. The first bill along these lines was the mid-1990s' Congressional Responsibility Act proposal, which would have "prohibit[ed] a regulation from taking effect before the enactment of a bill comprised solely of the text of the regulation."⁴⁴³ A version of this proposal now goes by the REINS Act, or Regulations from the Executive in Need of Scrutiny Act (H.R. 277 and S. 184),⁴⁴⁴ now reintroduced in the 118th Congress by Rep. Kat Cammack (R-Fla.) and Sen. Rand Paul (R-Ky.).⁴⁴⁵

This step would ensure that Congress bears direct responsibility for explicit regulatory costs, as well as for the indirect costs noted in Box 2. Although some regulations' gross benefits exceed gross costs under guidance like OMB Circular A-4,⁴⁴⁶ most rules never receive any cost or benefit analysis. Nor do agencies as a whole. This type of auditing would be useful for Congress's annual agency appropriation decisions.⁴⁴⁷ Whether tabulated or unanimous consent votes, and whether rules are voted on alone or in bundles, members of Congress should go on record for or against every noteworthy or controversial regulation.

Another significant measure introduced in the 118th Congress is the Article I Regulatory Budget Act that amends the Congressional Budget Act and the Regulatory Flexibility Act to enlist multiple offices in needed regulatory analysis. The White House, CBO, GAO, and Bureau of Economic Analysis would calculate and cap costs of regulations and guidance documents, significant and nonsignificant, individually and in the aggregate. This bill would help bring regulatory costs aboveboard, similar to what is already done with tax receipts and outlays.⁴⁴⁸

The All Economic Regulations Are Transparent (ALERT) Act⁴⁴⁹ would require monthly prenotifications on upcoming regulations, require disclosure of where regulations fit within cost tiers, and certify whether or not OMB reviewed a rule. Both these bills are sponsored by Rep. Bob Good (R-Va.).⁴⁵⁰ The Regulatory Accountability Act to enhance agency rulemaking processes has also been reintroduced,⁴⁵¹ as has the Small Business Regulatory Flexibility Improvements Act.⁴⁵²

Other bills in play include the Guidance Out of Darkness (GOOD) Act, to create a public portal where agencies would be required to post their guidance documents. Agencies often use these to issue new regulations or improperly influence policy while avoiding the required notice-and-comment rulemaking process. No *Code of Federal Regulations*—style database for guidance currently exists, and one must be skeptical that all regulation finds its way into the *Federal Register*. An official guidance portal to accompany the CFR and the *U.S. Code* would provide a more faithful portrayal of the federal government's reach and aid in setting up the additional restraints needed to confront the progressive agenda.⁴⁵³

The Guidance Clarity Act would require that documents attest to their nonbinding nature and add transparency and accountability to unfunded mandates.⁴⁵⁴ Legislation establishing a Regulatory Reduction Commission or task force for routine review and rule purging—modeled after the 1990s Base Realignment and Closure Commission—is

another important reform. The latest version of this reform is Sen. Mike Lee's (R-Utah) LIBERATE Act in the 117th Congress.⁴⁵⁵

Legislation requiring sunset of rules, and the codifying elements of Trump's executive order policies, such as the one-in, two-out rule for new regulations, guidance, and memoranda, is likely.⁴⁵⁶ Subjecting independent agencies to the regulatory review from which they are now exempt has enjoyed bipartisan support.⁴⁵⁷

At the agency-restraint level, bills have been introduced to allow states to regulate energy extraction operations on the federal lands within their own borders;⁴⁵⁸ reform the Endangered Species Act;⁴⁵⁹ prevent an FCC reinstatement of the Fairness Doctrine;⁴⁶⁰ ban COVID-19 vaccination requirements;⁴⁶¹ require concealed carry reciprocity across states;⁴⁶² and remove certain rifles and guns from the regulatory definition of "firearm."⁴⁶³

Some mechanism for government downsizing needs to be automatized. The foregoing bills do address foundational deconstruction of the administrative state's excesses. That still may not be enough. One solution is an "Office of No" that would replace or supplement the Office of Information and Regulatory Affairs. Its sole tasks would be to make the case against new and existing regulations and to facilitate ongoing sunset and streamlining.⁴⁶⁴

Legislation with more modest goals can still be very helpful at facilitating more fundamental reforms. Simplifying the confusing regulatory nomenclature (major, significant, economically significant) can help.⁴⁶⁵ So can limiting agencies' rulemaking to what they have already announced in the Unified Agenda and better distinguishing in the Unified Agenda and *Federal Register* between rules that are regulatory and those intended to be deregulatory. Reconciling recordkeeping across various government databases—such as direct mapping between the Unified Agenda, the GAO, and the *Federal Register*, as well as within the *Federal Register*'s own inconsistent internal databases—would boost

Box 4. Regulatory Transparency Report Card, Recommended Official Summary Data by Program, Agency, and Grand Total, with Five-Year Historical Tables

- Tallies of “economically significant” rules and minor rules by department, agency, and commission.

Category	Breakdown
1	> \$100 million < \$500 million
2	> \$500 million < \$1 billion
3	> \$1 billion < \$5 billion
4	> \$5 billion < \$10 billion
5	> \$10 billion

- Tallies of significant and other guidance documents, memoranda, and other “regulatory dark matter” by department, agency, and commission.
- Numbers and percentages of executive and independent agency rules deemed “deregulatory” for Executive Order 13,771 purposes.
- Numbers and percentages of rules affecting small business, deregulatory component.
- Depictions of how regulations and guidance accumulate as a small business grows.
- Additional agency rules subject to Regulatory Impact Analysis and other scrutiny.
- Aggregate cost estimates of regulation by category: paperwork, economic, social, health and safety, environmental.
- Tallies of existing cost estimates, including subtotals by agency and grand total.
- Numbers and percentages of regulations that contain numerical cost estimates.
- Numbers and percentages lacking cost estimates, with explanation.
- Analysis of the *Federal Register*, including number of pages and proposed and final rule breakdowns by agency.
- Number of major rules reported on by the Government Accountability Office in its database of reports on regulations.
- Number and percentage of agency rules and guidance documents presented to Congress in accordance with the Congressional Review Act.
- Ranking of most active rulemaking agencies.
- Rules that only affect internal agency procedures.
- Number of rules new to the Unified Agenda, number of rules carried over from previous years.
- Numbers and percentages of rules facing statutory or judicial deadlines that limit executive branch ability to restrain them or for which weighing costs and benefits is statutorily prohibited.
- Percentage of rules reviewed by the Office of Management and Budget and actions taken.

disclosure. Before Biden eliminated Trump’s guidance document portals, reporting of guidance was never incorporated in the *Federal Register* but could have been.

Online databases like Regulations.gov make it far easier than in pre-Internet times to learn about regulatory trends and acquire information on rules. More can be done to make material more complete, accessible, and user-friendly. Relevant regulatory data should be compiled and summarized for the public in annual report cards. The suggested components of such a regulatory

transparency report card that appear in Box 4 could be officially summarized in charts in the federal budget, the Unified Agenda, and the *Economic Report of the President*; on Regulations.gov; as part of a resurrection of the defunct *Regulatory Program of the U.S. Government*;⁴⁶⁶ or elsewhere.⁴⁶⁷

One cannot look at the daily *Federal Register* and get a sense of rules that are being cut or which agencies are adding the most rules, nor of which ones of a flow of rules might be reducing burdens rather than expanding them. These should be classified separately

in the *Federal Register*. In addition to revealing burdens, impacts, and trends, a report card can help reveal what one does *not* know about the regulatory state—such as, for example, the percentage of rules for which agencies failed to quantify either their costs or their benefits.

Current reporting distinguishes poorly between rules and guidance documents affecting the private sector and those affecting internal government operations.⁴⁶⁸ Providing historical tables for all elements of the regulatory enterprise would prove useful to scholars, third-party researchers, members of Congress, and the public. By making agency activity more explicit, a regulatory transparency report card would help ensure that policymakers take the growth of the administrative state seriously, or at least afford it some weight along with fiscal concerns.

The accumulation of regulatory guidance documents, memoranda, and other regulatory dark matter calls for greater disclosure and inventorying than exists now, and any report card would need ongoing improvement. Currently, by imposing requirements on the private sector instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

Pressure from states could eventually prompt Congress to address regulation. If Con-

gress does not act, states could step in. The Constitution's Article V provides for states to check federal power. Many state legislators have indicated support for the Regulation Freedom Amendment, which reads, in its entirety: "Whenever one quarter of the members of the U.S. House or the U.S. Senate transmit to the president their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation."⁴⁶⁹ That amounts to a version of the REINS (Regulations from the Executive in Need of Scrutiny) Act for the rule in question.

When Congress ensures transparency and disclosure and assumes responsibility for the growth of the regulatory state, the resulting system will be one that is fairer and more accountable to voters. Another pressing concern today is the executive branch's own arrogation of power to itself, a phenomenon that has escalated since 2020.

The greater questions are over not merely the role and legitimacy of the administrative state, but the proper scope of federal power to regulate. How one answers those questions will determine whether something resembling a constitutional republic will continue.

Appendix: Historical Tables

Part A. *Federal Register* Page History, 1936–2022

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	n/a	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592

Source: National Archives and Records Administration, Office of the Federal Register.
Publication of proposed rules was not required before the Administrative Procedure Act of 1946. Preambles to rules were published only to a limited extent before the 1970s.

n/a = not available; TBD = to be determined.

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090
2008	80,700	1,265	79,435
2009	69,644	1,046	68,598
2010	82,480	1,075	81,405
2011	82,415	1,168	81,247
2012	80,050	1,089	78,961
2013	80,462	1,151	79,311
2014	78,796	1,109	77,687
2015	81,402	1,142	80,260
2016	97,069	1,175	95,894
2017	61,950	642	61,308
2018	68,082	857	67,225
2019	72,564	128	72,436
2020	87,216	1,009	86,207
2021	74,082	761	73,321
2022	80,756	TBD	80,756

Part B. Number of Documents in the *Federal Register*, 1976–2022

Year	Final Rules	Significant Subset	Proposed Rules	Significant Subset	Other*	Total
1976	7,401		3,875		27,223	38,499
1977	7,031		4,188		28,381	39,600
1978	7,001		4,550		28,705	40,256
1979	7,611		5,824		29,211	42,646
1980	7,745		5,347		33,670	46,762
1981	6,481		3,862		30,090	40,433
1982	6,288		3,729		28,621	38,638
1983	6,049		3,907		27,580	37,536
1984	5,154		3,350		26,047	34,551
1985	4,843		3,381		22,833	31,057
1986	4,589		3,185		21,546	29,320
1987	4,581		3,423		22,052	30,056
1988	4,697		3,240		22,047	29,984
1989	4,714		3,194		22,218	30,126
1990	4,334		3,041		22,999	30,374
1991	4,416		3,099		23,427	30,942
1992	4,155		3,170		24,063	31,388
1993	4,369		3,207		24,017	31,593
1994	4,867		3,372		23,669	31,908
1995	4,713		3,339	222	23,133	31,185
1996	4,937	309	3,208	252	24,485	32,630
1997	4,584	267	2,881	226	26,260	33,725
1998	4,899	242	3,042	264	26,313	34,254
1999	4,684	232	3,281	335	26,074	34,039
2000	4,313	290	2,636	254	24,976	31,925
2001	4,132	297	2,512	206	25,392	32,036
2002	4,167	282	2,638	306	26,250	33,055
2003	4,148	335	2,538	314	25,168	31,854
2004	4,101	320	2,430	296	25,846	32,377
2005	3,943	257	2,257	197	26,020	32,220
2006	3,718	162	2,346	212	25,429	31,493
2007	3,595	180	2,308	308	24,784	30,687
2008	3,830	427	2,475	380	25,708	32,013
2009	3,503	371	2,044	330	25,218	30,765
2010	3,573	424	2,439	448	26,543	32,555
2011	3,807	422	2,898	483	26,296	33,001
2012	3,708	353	2,517	257	24,652	30,877
2013	3,659	331	2,594	316	24,517	30,770
2014	3,554	308	2,383	385	24,257	30,194
2015	3,410	345	2,342	381	24,294	30,046
2016	3,853	486	2,419	380	24,912	31,184
2017	3,281	224	1,834	177	22,132	27,247
2018	3,368	201	2,098	292	22,349	27,815
2019	2,964	261	2,131	379	22,181	27,276
2020	3,038	463	1,993	348	20,784	25,815
2021	4,429	386	1,780	278	17,170	6,209
2022	3,168	265	2,044	267	n/a	5,212

Rules since 1993: 114,821; rules since 1975: 211,911; other since 1975: 1,164,101.

Source: National Archives and Records Administration, Office of the Federal Register.

* “Other” documents are presidential documents, agency notices, and corrections. n/a = not available at time of writing.

Part C. Code of Federal Regulations Page Counts and Number of Volumes, 1975–2021

Year	Actual Pages Published (includes text, preliminary pages, and tables)				Unrevised CFR Volumes**	Total Pages Complete CFR	Total CFR Volumes (exclud- ing Index)
	Titles 1–50 (minus Title 3)	Title 3 (POTUS Docs)	Index*	Total Pages Published			
1975	69,704	296	792	70,792	432	71,224	133
1976	71,289	326	693	72,308	432	72,740	139
1977	83,425	288	584	84,297	432	84,729	141
1978	88,562	301	660	89,523	4,628	94,151	142
1979	93,144	438	990	94,572	3,460	98,032	148
1980	95,043	640	1,972	97,655	4,640	102,295	164
1981	103,699	442	1,808	105,949	1,160	107,109	180
1982	102,708	328	920	103,956	982	104,938	177
1983	102,892	354	960	104,206	1,448	105,654	178
1984	110,039	324	998	111,361	469	111,830	186
1985	102,815	336	1,054	104,205	1,730	105,935	175
1986	105,973	512	1,002	107,487	1,922	109,409	175
1987	112,007	374	1,034	113,415	922	114,337	185
1988	114,634	408	1,060	116,102	1,378	117,480	193
1989	118,586	752	1,058	120,396	1,694	122,090	196
1990	121,837	376	1,098	123,311	3,582	126,893	199
1991	119,969	478	1,106	121,553	3,778	125,331	199
1992	124,026	559	1,122	125,707	2,637	128,344	199
1993	129,162	498	1,141	130,801	1,427	132,228	202
1994	129,987	936	1,094	132,017	2,179	134,196	202
1995	134,471	1,170	1,068	136,709	1,477	138,186	205
1996	129,386	622	1,033	131,041	1,071	132,112	204
1997	128,672	429	1,011	130,112	948	131,060	200
1998	132,884	417	1,015	134,316	811	135,127	201
1999	130,457	401	1,022	131,880	3,052	134,932	202
2000	133,208	407	1,019	134,634	3,415	138,049	202
2001	134,582	483	1,041	136,106	5,175	141,281	206
2002	137,373	1,114	1,039	139,526	5,573	145,099	207
2003	139,550	421	1,053	141,024	3,153	144,177	214
2004	143,750	447	1,073	145,270	2,369	147,639	217
2005	146,422	103	1,083	147,608	4,365	151,973	221
2006	149,594	376	1,077	151,047	3,060	154,107	222
2007	149,236	428	1,088	150,752	5,258	156,010	222
2008	151,547	453	1,101	153,101	4,873	157,974	222
2009	158,369	412	1,112	159,893	3,440	163,333	225
2010	152,455	512	1,122	154,089	11,405	165,494	226
2011	159,129	486	1,136	160,751	8,544	169,295	230
2012	164,884	472	1,154	166,510	8,047	174,557	235
2013	166,352	520	1,170	168,042	7,454	175,496	235
2014	165,016	538	1,170	166,724	12,657	179,381	236
2015	170,278	495	1,170	171,943	6,334	178,277	237
2016	174,769	570	1,170	176,509	8,544	185,053	242
2017	178,628	846	1,170	180,644	5,730	186,374	242
2018	170,952	608	1,170	172,730	12,718	185,448	242
2019	172,022	1,092	1,170	174,284	11,700	185,984	242
2020	172,134	575	1,254	173,963	12,682	186,645	242
2021	180,495	789	1,277	182,561	5,785	188,346	243

Source: Chart from National Archives and Records Administration, Office of the Federal Register.
 *General Index and Finding Aids volume for 1975 and 1976. ** Unrevised CFR volumes page totals include those previous editions for which a cover only was issued during the year or any previous editions for which a supplement was issued.
 CFR = Code of Federal Regulations; POTUS = president of the United States.

Part D. Number of Regulatory Reviews at the Office of Information and Regulatory Affairs, 1991–2022

Year	Average Days Review Time										
	Prerule Reviews	Proposed Rule Reviews	Interim Final Rule Reviews	Final Rule Reviews	Notice Reviews	Total Reviews	ES Reviews	Non-ES Reviews	Days ES Reviews	Days Non- ES Reviews	Overall Average Days
1991		1,201		1,322		2,523	142	2,381	39	29	29
1992		970		1,315		2,285	121	2,164	44	39	39
1993	2	976	6	1,155	28	2,167	106	2,061	53	42	43
1994	16	317	68	302	128	831	134	697	33	30	31
1995	8	225	64	270	53	620	74	546	41	35	35
1996	28	160	56	232	31	507	74	433	39	42	42
1997	20	196	64	174	51	505	81	424	47	54	53
1998	15	192	58	182	40	487	73	414	33	50	48
1999	19	247	71	214	36	587	86	501	51	53	53
2000	13	210	66	253	40	582	92	490	60	62	62
2001	9	274	95	285	37	700	111	589	46	60	58
2002	23	261	81	249	55	669	100	569	44	46	46
2003	23	232	92	309	59	715	101	614	42	50	49
2004	26	237	64	241	58	626	85	541	35	55	53
2005	18	221	66	247	59	611	82	529	39	59	57
2006	12	229	43	270	46	600	71	529	34	59	56
2007	22	248	44	250	25	589	85	504	49	64	61
2008	17	276	39	313	28	673	135	538	53	63	61
2009	28	214	67	237	49	595	125	470	33	40	39
2010	36	261	84	232	77	690	138	552	48	51	51
2011	24	317	76	262	61	740	117	623	51	60	58
2012	12	144	33	195	40	424	83	341	69	81	79
2013	11	177	33	160	37	418	104	314	121	143	137
2014	17	201	43	144	46	452	114	338	106	134	127
2015	8	178	29	164	35	415	130	285	84	90	88
2016	14	231	28	303	45	623	156	467	83	79	80
2017	13	84	12	103	24	237	70	167	56	74	68
2018	25	168	11	124	32	360	91	269	63	68	67
2019	26	234	25	147	41	474	117	357	77	80	79
2020	14	213	77	257	104	669	199	470	57	75	70
2021	30	170	58	173	72	503	172	331	58	60	59
2022	18	191	24	147	103	485	161	324	75	72	73

Source: Author search on RegInfo.gov; "Review Counts" database search engine under Regulatory Review heading.
ES = economically significant.

Part E. Unified Agenda Rules History, 1983–2022

Total Number of Rules under Consideration or Enacted

1980s			1990s			2000s		
1983	April	2,863	1990	April	4,332	2000	October	4,699
	October	4,032		October	4,470	2001	October	4,509
1984	April	4,114	1991	April	4,675	2002	October	4,187
	October	4,016		October	4,863	2003	December	4,266
1985	April	4,265	1992	April	4,186	2004	December	4,083
	October	4,131		October	4,909	2005	October	4,062
1986	April	3,961	1993	April	4,933	2006	December	4,052
	October	3,983		October	4,950	2007	December	3,882
1987	April	4,038	1994	April	5,105	2008	December	4,004
	October	4,005		October	5,119	2009	December	4,043
1988	April	3,941	1995	April	5,133			
	October	4,017		October	4,735			
1989	April	4,003	1996	April	4,570			
	October	4,187		October	4,680			
			1997	April	4,417			
				October	4,407			
			1998	April	4,504			
				October	4,560			
			1999	April	4,524			
				October	4,568			
2010s			2020s					
2010	December	4,225	2020	December	3,852			
2011	December	4,128	2021	December	3,772			
2012	Year-End*	4,062	2022	January 4, 2023	3,690			
2013	November	3,305						
2014	November	3,415						
2015	November	3,297						
2016	November	3,318						
2017	December	3,209						
2018	October	3,534						
2019	October	3,752						

Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions; also from online edition at <http://www.reginfo.gov>.

*Spring edition skipped in 2012.

Part F. Agenda Rules History by Department and Agency, 2003–2021

	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Department of Agriculture	175	164	185	114	114	140	155	160	159	276	265	287	327	374	290	311	292	279	323
Department of Commerce	269	312	294	279	247	231	246	270	250	415	328	296	300	325	303	302	296	273	300
Department of Defense	219	234	253	246	193	115	117	121	104	146	140	150	133	109	131	143	163	126	108
Department of Education	42	23	32	49	38	27	25	26	20	24	18	23	22	17	13	16	9	11	13
Department of Energy	138	153	134	97	87	97	107	105	92	108	96	96	85	54	47	63	61	50	66
Department of Health and Human Services	235	250	241	237	189	197	213	217	200	204	251	312	231	236	259	257	249	233	219
Department of Homeland Security	160	155	154	171	123	123	130	141	139	160	232	230	237	252	267	280	295	314	338
Department of Housing and Urban Development	51	52	51	48	42	47	52	55	52	58	65	65	60	73	86	92	90	103	109
Department of Justice	118	306	86	70	68	94	100	102	95	112	120	137	121	138	140	139	124	125	122
Department of Labor	98	108	98	83	64	94	97	95	84	98	90	99	104	96	94	93	93	88	89
Department of State	70	92	77	75	64	38	44	47	41	63	35	30	18	27	28	28	24	21	15
Department of the Interior	363	71	296	233	183	285	288	324	353	320	325	259	277	287	264	305	303	287	295
Department of Transportation	301	301	295	298	255	240	210	216	220	232	224	223	230	200	199	215	227	301	365
Department of the Treasury	360	394	402	439	444	469	391	426	428	487	497	580	528	521	545	501	514	532	530
Department of Veterans Affairs	85	81	70	79	79	76	80	75	66	85	82	81	78	80	65	77	76	79	87
Advisory Council on Historic Preservation								1						0	0	0		1	1
Agency for International Development	16	17	13	8	9	14	8	7	5	10	14	14	12	7	10	8	10	8	8
American Battle Monuments Commission			1	1	2														
Architectural and Transportation Barriers Compliance Board	5	2	1	1	3	6	6	7	8	8	8	7	6	5	5	4	3	4	4
Broadcasting Board of Governors				3															
Commission on Civil Rights				1	1	1	1	1	1		1	1	1	2	1	1	1	1	1
Commodity Futures Trading Commission	18	42	40	36	32	35	34	26	33	83	68	56	32	25	19	14	11	15	15
Consumer Financial Protection Bureau	9	21	19	22	29	26	23	21	26	34									
Consumer Product Safety Commission	22	21	26	29	29	43	45	37	33	48	38	51	39	31	19	24	18	18	20
Corporation for National and Community Service	11	9	8	7	6	6	7	6	4	5	13	10	7	7	9	11	11	8	9
Council on Environmental Quality	5	3	2	2															
Council of Inspector General on Integrity and Efficiency	1	1	4	1	2	1													
Court Services/Offender Supervision, DC	7	7		5	6	4	4	3	3	3	3	2	2	2	2	1	1	1	3
CPBSD*	9	4	2	2	3	4	2	2	2	2	3	3	3	3	5	6	6	5	0
Defense Nuclear Facilities Safety Board					1														
Environmental Protection Agency	226	232	221	218	220	203	188	186	179	223	318	345	331	330	336	372	400	416	417
Equal Employment Opportunity Commission		15	10	7	8	10	8	8	9	9	7	7	7	5	7	8	6	3	4

	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Export-Import Bank of the United States										1									
Farm Credit Administration	14	19	16	14	31	27	27	26	30	30	25	23	25	19	12	19	20	20	21
Farm Credit System Insurance Corporation						2					25		1	1	0	1	1	1	1
Federal Acquisition Regulation	58	61	60	53	43	40	42	36	40	50	51	85	55	44	36	42	44	45	49
Federal Communications Commission	87	79	93	83	106	122	133	132	132	118	103	147	145	143	145	139	143	146	134
Federal Council on the Arts and Humanities														1					
Federal Deposit Insurance Corporation	29	56	42	39	29	19	25	25	17	22	21	21	21	19	18	24	16	20	17
Federal Emergency Management Agency														0	0	0	0	0	0
Federal Energy Regulatory Commission	22	12	19	18	17	21	25	24	29	40	41	36	37	39	41	47	35	23	21
Federal Housing Finance Agency	14	14	12	18	14	20	20	19	20	32	25	27	30	10	3	8	8	9	11
Federal Housing Finance Board														3					
Federal Maritime Commission	5	3	2	2	4	6	8	7	6	4	8	4	6	3	4	3	5	7	11
Federal Mediation and Conciliation Service	5	4	2	1						1	1	2	2	2	1	1	2	2	3
Federal Mine Safety and Health Review Commission	2	2	4																
Federal Permitting Improvement Steering Council	2	3																	
Federal Reserve System	31	46	48	39	29	22	18	23	16	25	29	22	26	18	20	13	17	18	18
Financial Stability Oversight Council										2									
Federal Trade Commission	19	20	19	18	20	18	20	23	20	23	24	19	20	17	14	16	15	14	12
General Services Administration	43	32	27	31	20	23	21	25	18	21	29	34	49	54	26	34	33	27	37
Gulf Coast Ecosystem Restoration Council						2	4	4											
Institute of Museum and Library Services	1	2	4	1	1		1	1	3	3	1	2	1	2	1	1	4	3	6
Inter-American Foundation	2																		
National Aeronautics and Space Administration	5	10	8	10	12	12	14	22	23	37	46	26	32	19	11	15	20	27	34
National Archives and Records Administration	8	9	7	7	8	10	8	10	6	6	4	9	7	10	15	21	17	22	19
National Commission on Military, National, and Public Service				2															
National Council on Disability							1												
National Credit Union Administration	30	32	20	20	23	15	26	22	24	31	28	24	24	22	24	29	27	26	27
National Endowment for the Arts	6	6	6	6	6	5	7	8	7	8			2	3	2	2	2	2	6
National Endowment for the Humanities	7	5	7	5	4	4	4	5	4	3	5	4	3	3	3	3	3	3	8
National Indian Gaming Commission	16	10	6	7	8	9	9	5	5	15	15	9	17	18	19	16	15	14	14
National Labor Relations Board	4	4	6	2	1			1	1	1									
National Mediation Board	1	1	2	1	1														
National Science Foundation	3	1			3	2	1	3	2	3	3	2	3	3	0	2	3	3	2

	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
National Transportation Safety Board	7	6	6	5	8	17	15	14											
Nuclear Regulatory Commission	61	56	56	51	60	62	65	60	53	73	64	63	61	54	53	45	49	42	45
Office of Federal Housing Enterprise Oversight														10	9	8	6	4	4
Office of Government Ethics	13	13	11	7	6	8	5	6	4	4	5	7	7	6	9	8	7	7	9
Office of Management and Budget	8	9	9	5	4	4	4	2	2	5	8	7	7	2	1	2	2	3	4
Office of National Drug Control Policy	1	2																	
Office of Personnel Management	48	51	37	26	22	38	40	67	54	73	87	77	77	80	75	93	94	103	90
Office of the Trade Representative		2			2	3													
Peace Corps	5	6	5	4	4	4	3	4	4	5	5	1	1	7	6	6	5	4	9
Pension Benefit Guaranty Corporation	10	12	14	16	17	13	12	12	13	13	12	10	10	12	12	13	9	6	4
Postal Regulatory Commission	5	5	5	4	3			2	2	2	1	3	2	2	3	0	0	0	0
Presidio Trust		3	2	4	4									0	0	0	2	2	1
Privacy and Civil Liberties Oversight Board			4		1				1					0	1	0	0	0	0
Railroad Retirement Board	7	7	7	6	4	2	1	1	1	1	1	1	1	3	2	6	5	6	11
Recovery Accountability and Transparency Board								3	3	2		1	3						
Securities and Exchange Commission	74	80	101	99	85	75	69	61	76	89	107	75	74	72	76	71	64	79	71
Selective Service System											1	1	1	1	1	1	1	1	1
Small Business Administration	76	65	40	30	29	30	33	30	30	43	48	51	39	26	28	32	34	29	33
Social Security Administration	22	19	15	31	27	36	42	39	44	49	53	63	58	64	63	53	68	59	64
Special Inspector General for Afghanistan Reconstruction					1	1				4									
Surface Transportation Board	8	10	9	7	10	20	12	8	9	10	11	5	5	6	4	7	3	4	5
Tennessee Valley Authority	1			1	1									0	0	0	0	0	2
U.S. Agency for Global Media	3	4	3																
U.S. Chemical Safety and Hazard Investigation Board			1																
U.S. Commission on Civil Rights	1	1	1																
U.S. International Development Finance Corporation			1																
Udall Institute for Environmental Conflict Resolution														0	0	0	0	0	1
TOTAL	3,777	3,852	3,752	3,534	3,209	3,318	3,297	3,415	3,305	4,062	4,128	4,225	4,043	4,004	3,882	4,052	4,062	4,083	4,266

Sources: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," Federal Register, various years' editions; and from online edition at <http://www.reginfo.gov>.

*Committee for Purchase from People Who Are Blind or Severely Disabled.

Part G. List of 332 Economically Significant Rules in the Pipeline, Fall 2022

Source: Compiled by Clyde Wayne Crews Jr. from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from online edition at <http://www.reginfo.gov>.

The “Regulation Identifier Number” or RIN appears at the end of each entry. For additional information, see “How to Use the Unified Agenda,” http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_HowTo.jsp.

ACTIVE RULEMAKINGS (244 Actions)

ties in Accord with Presidential Proclamation 10414, 0625-AB21

DEPARTMENT OF AGRICULTURE

1. USDA/AgSEC, Proposed Rule Stage, Partnerships With Faith-Based and Neighborhood Organizations, 0503-AA73
2. USDA/AgSEC, Final Rule Stage, Pandemic Assistance Programs, 0503-AA75
3. USDA/RBS, Final Rule Stage, B&I CARES Act Guaranteed Loan Program—Final Rule 7 CFR 4279, 0570-AB07
4. USDA/APHIS, Proposed Rule Stage, AQI User Fees, 0579-AE71
5. USDA/AMS, Final Rule Stage, Organic Livestock and Poultry Standards (AMS-NOP-21-0073), 0581-AE06
6. USDA/FNS, Proposed Rule Stage, Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages, 0584-AE82
7. USDA/FNS, Proposed Rule Stage, Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans, 0584-AE88
8. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments, 0584-AE43
9. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program (SNAP): Standardization of State Heating and Cooling Standard Utility Allowances, 0584-AE69
10. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program Requirement for Interstate Data Matching, 0584-AE75

DEPARTMENT OF COMMERCE

11. DOC/ADMIN, Final Rule Stage, Securing the Information and Communications Technology and Services Supply Chain, 0605-AA51
12. DOC/ITA, Final Rule Stage, Procedures Covering Suspension of Liquidation, Duties and Estimated Du-

DEPARTMENT OF DEFENSE

13. DOD/COE, Proposed Rule Stage, Revised Definition of “Waters of the United States”—Rule 2, 0710-AB47
14. DOD/COE, Final Rule Stage, Revised Definition of “Waters of the United States”—Rule 1, 0710-AB40
15. DOD/DARC, Proposed Rule Stage, Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041), 0750-AK81
16. DOD/OS, Proposed Rule Stage, Cybersecurity Maturity Model Certification (CMMC) Program, 0790-AL49
17. DOD/OS, Final Rule Stage, National Industrial Security Program Operating Manual (NISPOM), 0790-AK85

DEPARTMENT OF EDUCATION

18. ED/OPE, Prerule Stage, Accreditation and Related Issues, 1840-AD82
19. ED/OPE, Prerule Stage, State Authorization, 1840-AD83
20. ED/OPE, Prerule Stage, Return to Title IV, 1840-AD85
21. ED/OPE, Prerule Stage, Cash Management, 1840-AD86
22. ED/OPE, Prerule Stage, Third-Party Servicers and Related Issues, 1840-AD87
23. ED/OPE, Prerule Stage, Improving Use of Deferments and Forbearances, 1840-AD88
24. ED/OPE, Prerule Stage, Distance Education, 1840-AD92
25. ED/OPE, Proposed Rule Stage, Ability to Benefit, 1840-AD51
26. ED/OPE, Proposed Rule Stage, Gainful Employment, 1840-AD57
27. ED/OPE, Proposed Rule Stage, Factors of Financial Responsibility, 1840-AD64
28. ED/OPE, Proposed Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 1840-AD67
29. ED/OPE, Proposed Rule Stage, Improving Income Driven Repayment, 1840-AD81

30. ED/OPE, Proposed Rule Stage, Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, 1840-AD90
31. ED/OS, Proposed Rule Stage, Debt Collection Practices, 1894-AA12

DEPARTMENT OF ENERGY

32. DOE/ENDER, Prerule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB55
33. DOE/ENDER, Proposed Rule Stage, Loan Guarantees for Clean Energy Projects, 1901-AB54
34. DOE/ENDER, Final Rule Stage, Loan Guarantees for Clean Energy Projects, 1901-AB59
35. DOE/EE, Prerule Stage, Energy Conservation Standards for Consumer Furnaces, 1904-AF19
36. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Circulator Pumps and Small Vertical In-Line Pumps, 1904-AD61
37. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for External Power Supplies, 1904-AD87
38. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Consumer Clothes Washers, 1904-AD98
39. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Distribution Transformers, 1904-AE12
40. DOE/EE, Proposed Rule Stage, Clean Energy Rule for New Federal Buildings and Major Renovations, 1904-AB96
41. DOE/EE, Final Rule Stage, Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces, 1904-AD20
42. DOE/EE, Final Rule Stage, Energy Conservation Standards for Commercial Water Heating-Equipment, 1904-AD34
43. DOE/EE, Final Rule Stage, Energy Conservation Standards for Pool Heaters, 1904-AD49
44. DOE/EE, Final Rule Stage, Energy Conservation Standards for Room Air Conditioners, 1904-AD97
45. DOE/EE, Final Rule Stage, Energy Conservation Standards for Dedicated-Purpose Pool Pump Motors, 1904-AF27
46. DOE/OGC, Proposed Rule Stage, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39

DEPARTMENT OF HEALTH AND HUMAN SERVICES

47. HHS/FDA, Proposed Rule Stage, Medication Guide; Patient Medication Information, 0910-AH68
48. HHS/FDA, Proposed Rule Stage, Protection of Human Subjects and Institutional Review Boards, 0910-AI07

49. HHS/FDA, Proposed Rule Stage, Institutional Review Boards; Cooperative Research, 0910-AI08
50. HHS/FDA, Proposed Rule Stage, Nutrient Content Claims, Definition of Term: Healthy, 0910-AI13
51. HHS/FDA, Proposed Rule Stage, Investigational New Drug Application Annual Reporting, 0910-AI37
52. HHS/FDA, Proposed Rule Stage, Tobacco Product Standard for Nicotine Level of Certain Tobacco Products, 0910-AI76
53. HHS/FDA, Final Rule Stage, General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products, 0910-AH14
54. HHS/FDA, Final Rule Stage, Tobacco Product Standard for Characterizing Flavors in Cigars, 0910-AI28
55. HHS/FDA, Final Rule Stage, Prohibition of Sale of Tobacco Products to Persons Younger Than 21 Years of Age, 0910-AI51
56. HHS/FDA, Final Rule Stage, Tobacco Product Standard for Menthol in Cigarettes, 0910-AI60
57. HHS/SAMHSA, Proposed Rule Stage, Medications for the Treatment of Opioid Use Disorder, 0930-AA39
58. HHS/CMS, Proposed Rule Stage, Administrative Simplification: Adoption of Standards for Health Care Attachment Transactions and Electronic Signatures, and Modification to Referral Certification and Authorization Standard (CMS-0053), 0938-AT38
59. HHS/CMS, Proposed Rule Stage, Administrative Simplification: Modifications to NCPDP Retail Pharmacy Standards (CMS-0056), 0938-AU19
60. HHS/CMS, Proposed Rule Stage, Misclassification of Drugs, Program Administration and Program Integrity Updates Under the Medicaid Drug Rebate Program (CMS-2434), 0938-AU28
61. HHS/CMS, Proposed Rule Stage, Alternative Payment Model (CMS-5535), 0938-AU51
62. HHS/CMS, Proposed Rule Stage, Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS-4198), 0938-AU59
63. HHS/CMS, Proposed Rule Stage, Short-Term Limited Duration Insurance; Update (CMS-9904), 0938-AU67
64. HHS/CMS, Proposed Rule Stage, Transitional Coverage for Emerging Technologies (CMS-3421), 0938-AU86
65. HHS/CMS, Proposed Rule Stage, Interoperability and Prior Authorization for MA Organizations, Medicaid and CHIP Managed Care and State Agencies, FFE QHP Issuers, MIPS Eligible Clinicians, Eligible Hospitals and CAHs (CMS-0057), 0938-AU87
66. HHS/CMS, Proposed Rule Stage, Medicare and Medicaid Program Integrity (CMS-6084), 0938-AU90
67. HHS/CMS, Proposed Rule Stage, Culturally Competent and Person-Centered Requirements to Increase Ac-

- cess to Care and Improve Quality for All (CMS-3418), 0938-AU91
68. HHS/CMS, Proposed Rule Stage, Contract Year 2024 Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Medicare Cost Plan Programs, Medicare Overpayment Provisions of the Affordable Care Act, and PACE (CMS-4201), 0938-AU96
 69. HHS/CMS, Proposed Rule Stage, HHS Notice of Benefit and Payment Parameters for 2024 (CMS-9899), 0938-AU97
 70. HHS/CMS, Proposed Rule Stage, Medicaid Managed Care (CMS-2439), 0938-AU99
 71. HHS/CMS, Proposed Rule Stage, FY 2024 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS-1779), 0938-AV02
 72. HHS/CMS, Proposed Rule Stage, CY 2024 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS-1780), 0938-AV03
 73. HHS/CMS, Proposed Rule Stage, FY 2024 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Program (CMS-1781), 0938-AV04
 74. HHS/CMS, Proposed Rule Stage, CY 2024 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1782), 0938-AV05
 75. HHS/CMS, Proposed Rule Stage, FY 2024 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS-1783), 0938-AV06
 76. HHS/CMS, Proposed Rule Stage, CY 2024 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1784), 0938-AV07
 77. HHS/CMS, Proposed Rule Stage, Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2024 Rates (CMS-1785), 0938-AV08
 78. HHS/CMS, Proposed Rule Stage, CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1786), 0938-AV09
 79. HHS/CMS, Proposed Rule Stage, FY 2024 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1787), 0938-AV10
 80. HHS/CMS, Proposed Rule Stage, Medicare Disproportionate Share Hospital (DSH) Payments: Counting Days Associated with Section 1115 Demonstrations in the Medicaid Fraction (CMS-1788), 0938-AV17
 81. HHS/CMS, Proposed Rule Stage, Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018–2022 (CMS-1793), 0938-AV18
 82. HHS/CMS, Final Rule Stage, Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2020; Risk Adjustment Data Validation (CMS-4185), 0938-AT59
 83. HHS/CMS, Final Rule Stage, Streamlining the Medicaid and CHIP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS-2421), 0938-AU00
 84. HHS/CMS, Final Rule Stage, Treatment of Medicare Part C Days in the Calculation of a Hospital's Medicare Disproportionate Patient Percentage (CMS-1739), 0938-AU24
 85. HHS/CMS, Final Rule Stage, Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Temporary Increase in Federal Medical Assistance Percentage (FMAP) (CMS-9912), 0938-AU35
 86. HHS/CMS, Final Rule Stage, Basic Health Program; Federal Funding Methodology for Program Year 2023 and Proposed Changes to Basic Health Program Regulations (CMS-2441), 0938-AU89
 87. HHS/CMS, Final Rule Stage, CY 2024 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8083), 0938-AV11
 88. HHS/OCR, Proposed Rule Stage, Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities, 0945-AA15
 89. HHS/OCR, Proposed Rule Stage, Rescission of the Regulation Entitled "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority," 0945-AA18
 90. HHS/OCR, Final Rule Stage, HIPAA Privacy: Changes to Support, and Remove Barriers to, Coordinated Care and Individual Engagement, 0945-AA00
 91. HHS/OCR, Final Rule Stage, Nondiscrimination in Health Programs and Activities, 0945-AA17
 92. HHS/ACE, Proposed Rule Stage, Foster Care Legal Representation, 0970-AC89
 93. HHS/ACE, Final Rule Stage, Mitigating the Spread of COVID-19 in Head Start Programs, 0970-AC90
 94. HHS/OS, Proposed Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 0991-AC31

DEPARTMENT OF HOMELAND SECURITY

95. DHS/OS, Proposed Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 1601-AB02

96. DHS/USCIS, Proposed Rule Stage, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 1615-AC68
97. DHS/USCIS, Proposed Rule Stage, Modernizing H-1B Requirements and Oversight and Providing Flexibility in the F-1 Program, 1615-AC70
98. DHS/USCIS, Final Rule Stage, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 1615-AC67
99. DHS/USCIS, Final Rule Stage, Exercise of Time-Limited Authority to Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking to Change, 1615-AC82
100. DHS/USCBP, Proposed Rule Stage, 9-11 Response & Biometric Entry-Exit Fees for H-1B and L-1 Visas, 1651-AB48
101. DHS/USCBP, Final Rule Stage, Air Cargo Advance Screening (ACAS), 1651-AB04
102. DHS/USCBP, Final Rule Stage, Mandatory Advance Electronic Information for International Mail Shipments, 1651-AB33
103. DHS/FEMA, Proposed Rule Stage, National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form, 1660-AB06
104. DHS/FEMA, Proposed Rule Stage, Individual Assistance Program Equity, 1660-AB07
105. DHS/FEMA, Final Rule Stage, Hermit's Peak/Calf Canyon Fire Assistance, 1660-AB14

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

106. HUD/HUDSEC, Proposed Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 2501-AD98
107. HUD/OH, Final Rule Stage, Increased 40-Year Term for Loan Modifications (FR-6263), 2502-AJ59

DEPARTMENT OF THE INTERIOR

108. DOI/BLM, Proposed Rule Stage, Waste Prevention, Production Subject to Royalties, and Resource Conservation, 1004-AE79
109. DOI/BLM, Final Rule Stage, Helium Contracts, 1004-AE93
110. DOI/BOEM, Proposed Rule Stage, Renewable Energy Modernization Rule, 1010-AE04

111. DOI/BOEM, Proposed Rule Stage, Risk Management and Financial Assurance for OCS Lease and Grant Obligations, 1010-AE14
112. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations, 1018-BF64
113. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2024–25 Migratory Game Bird Hunting Regulations, 1018-BG63
114. DOI/ASLM, Proposed Rule Stage, Carbon Sequestration, 1082-AA04

DEPARTMENT OF JUSTICE

115. DOJ/LA, Proposed Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 1105-AB64
116. DOJ/DEA, Final Rule Stage, Partial Filling of Prescriptions for Schedule II Controlled Substances, 1117-AB45
117. DOJ/DEA, Final Rule Stage, Implementation of the SUPPORT Act: Dispensing and Administering Controlled Substances for Medication-Assisted Treatment, 1117-AB55
118. DOJ/EOIR, Final Rule Stage, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers, 1125-AB20
119. DOJ/CRT, Proposed Rule Stage, Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments, 1190-AA79

DEPARTMENT OF LABOR

120. DOL/ETA, Proposed Rule Stage, Temporary Employment of H-2B Foreign Workers in the United States, 1205-AB93
121. DOL/ETA, Proposed Rule Stage, Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 1205-AC00
122. DOL/ETA, Proposed Rule Stage, Improving Protections for Workers in Temporary Agricultural Employment in the United States, 1205-AC12
123. DOL/EBSA, Proposed Rule Stage, Definition of the Term “Fiduciary,” 1210-AC02
124. DOL/EBSA, Proposed Rule Stage, Short-Term Limited Duration Insurance; Update, 1210-AC12
125. DOL/EBSA, Final Rule Stage, Pension Benefit Statements—Lifetime Income Illustrations, 1210-AB20
126. DOL/EBSA, Final Rule Stage, Implement SECURE Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500, 1210-AB97

127. DOL/OSHA, Prerule Stage, Process Safety Management and Prevention of Major Chemical Accidents, 1218-AC82
128. DOL/OSHA, Proposed Rule Stage, Infectious Diseases, 1218-AC46
129. DOL/OSHA, Proposed Rule Stage, Emergency Response, 1218-AC91
130. DOL/OSHA, Final Rule Stage, Occupational Exposure to COVID-19 in Healthcare Settings, 1218-AD36
131. DOL/WHd, Proposed Rule Stage, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 1235-AA39
132. DOL/WHd, Proposed Rule Stage, Nondisplacement of Qualified Workers under Service Contracts, 1235-AA42
133. DOL/WHd, Proposed Rule Stage, Employee or Independent Contractor Classification under the Fair Labor Standards Act, 1235-AA43
134. DOL/WHd, Final Rule Stage, Updating the Davis-Bacon and Related Acts Regulations, 1235-AA40
135. DOL/OFCCP, Proposed Rule Stage, Modernizing Affirmative Action and Nondiscrimination Obligations for Federal Contractors and Subcontractors, 1250-AA13
136. DOL/OS, Proposed Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 1290-AA45

DEPARTMENT OF STATE

137. STATE, Final Rule Stage, Schedule of Fees for Consular Services—Nonimmigrant and Special Visa Fees, 1400-AF33

DEPARTMENT OF TRANSPORTATION

138. DOT/FAA, Proposed Rule Stage, Safety Management System for Parts 21, 91, 135 and 145, 2120-AL60
139. DOT/FMCSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2126-AB63
140. DOT/FMCSA, Proposed Rule Stage, Automatic Emergency Braking Systems, 2126-AC49
141. DOT/NHTSA, Prerule Stage, Advanced Impaired Driving Technology, 2127-AM50
142. DOT/NHTSA, Prerule Stage, Side Underride Guards on Trailers and Semitrailers, 2127-AM54
143. DOT/NHTSA, Proposed Rule Stage, Rear Seat Belt Reminder System, 2127-AL37
144. DOT/NHTSA, Proposed Rule Stage, Heavy Vehicle Automatic Emergency Braking, 2127-AM36
145. DOT/NHTSA, Proposed Rule Stage, Light Vehicle Automatic Emergency Braking (AEB) with Pedestrian AEB, 2127-AM37

146. DOT/NHTSA, Proposed Rule Stage, Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles, 2127-AM39
147. DOT/NHTSA, Proposed Rule Stage, Rear Designated Seating Position Alert, 2127-AM49
148. DOT/NHTSA, Proposed Rule Stage, Light Vehicle CAFE Standards Beyond MY 2026, 2127-AM55
149. DOT/FTA, Proposed Rule Stage, Statewide and Non-metropolitan and Metropolitan Transportation Planning, 2132-AB45
150. DOT/PHMSA, Proposed Rule Stage, Hazardous Materials: Advancing Safety of Highway, Rail, and Vessel Transportation, 2137-AF41
151. DOT/PHMSA, Final Rule Stage, Pipeline Safety: Class Location Requirements, 2137-AF29

DEPARTMENT OF THE TREASURY

152. TREAS/DO, Final Rule Stage, Small Business Administration Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Criteria for Seasonal Employers, 1505-AC67
153. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness, 1505-AC69
154. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness, 1505-AC70
155. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 1505-AC71
156. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Extension of and Changes to Paycheck Protection Program, 1505-AC74
157. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, 1505-AC75
158. TREAS/DO, Final Rule Stage, Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends, 1505-AC76
159. TREAS/FINCEN, Proposed Rule Stage, Section 6101. Establishment of National Exam and Supervision Priorities, 1506-AB52
160. TREAS/FINCEN, Proposed Rule Stage, Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 1506-AB59
161. TREAS/CUSTOMS, Final Rule Stage, Automated Commercial Environment (ACE) Required for Elec-

- tronic Entry/Entry Summary (Cargo Release and Related Entry) Filings, 1515-AE03
162. TREAS/IRS, Proposed Rule Stage, Definition of Church Plan, 1545-BO31
163. TREAS/IRS, Proposed Rule Stage, Guidance Regarding Treatment of Amounts Required to Be Capitalized in Certain Transactions to Which Section 1.263(a)-5 Applies, 1545-BQ19
164. TREAS/IRS, Proposed Rule Stage, Short-Term Limited Duration Insurance; Update, 1545-BQ28
165. TREAS/IRS, Final Rule Stage, Rules for Denial of Deduction for Certain Fines, Penalties, and Other Amounts, 1545-BO67
166. TREAS/IRS, Final Rule Stage, Guidance on the Elimination of Interbank Offered Rates, 1545-BO91
167. TREAS/IRS, Final Rule Stage, Guidance Under Section 954(b)(4) (Rules for High-Taxed Subpart F Income) and Section 964 (Rules for Determining the Earnings and Profits of a Foreign Corporation), 1545-BP62
168. TREAS/IRS, Final Rule Stage, Guidance Related to the Foreign Tax Credit, Clarification of Foreign-Derived Intangible Income, 1545-BP70

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169. VA, Proposed Rule Stage, Partnerships with Faith-Based And Neighborhood Organizations, 2900-AR23
170. VA, Proposed Rule Stage, Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders, 2900-AQ73
171. VA, Proposed Rule Stage, Post-9/11 Improvements, Fry Scholarship, and Interval Payments Amendments, 2900-AQ88
172. VA, Proposed Rule Stage, Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure, 2900-AR10
173. VA, Proposed Rule Stage, Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans, 2900-AR58
174. VA, Final Rule Stage, Schedule for Rating Disabilities—Ear, Nose, Throat, and Audiology Disabilities; Special Provisions Regarding Evaluation of Respiratory Conditions; Respiratory System, 2900-AQ72
175. VA, Final Rule Stage, Schedule for Rating Disabilities; Mental Disorders, 2900-AQ82
176. VA, Final Rule Stage, Schedule for Rating Disabilities: The Digestive System, 2900-AQ90
177. VA, Final Rule Stage, Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter, 2900-AR25
178. VA, Final Rule Stage, Reimbursement for Emergency Treatment, 2900-AQ08

179. VA, Final Rule Stage, Supportive Services for Veterans Families, 2900-AR15

ENVIRONMENTAL PROTECTION AGENCY

180. EPA/RODENVER, Final Rule Stage, Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah, 2008-AA03
181. EPA/OW, Proposed Rule Stage, Federal Recreational Water Quality Criteria Applicable to Certain Waters in New York, 2040-AG08
182. EPA/OW, Proposed Rule Stage, Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 2040-AG23
183. EPA/OW, Proposed Rule Stage, Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation Rulemaking, 2040-AG18
184. EPA/OLEM, Final Rule Stage, Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, 2050-AH22
185. EPA/OLEM, Final Rule Stage, Alternate PCB Extraction Methods and Amendments to PCB Cleanup and Disposal Regulations, 2050-AH08
186. EPA/OLEM, Final Rule Stage, Designating PFOA and PFOS as CERCLA Hazardous Substances, 2050-AH09
187. EPA/OAR, Proposed Rule Stage, National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations, 2060-AU37
188. EPA/OAR, Proposed Rule Stage, Volume Requirements for 2023 and Beyond under the Renewable Fuel Standard Program, 2060-AV14
189. EPA/OAR, Proposed Rule Stage, New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review, 2060-AV16
190. EPA/OAR, Proposed Rule Stage, Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years, 2060-AV45
191. EPA/OAR, Proposed Rule Stage, Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act, 2060-AV46
192. EPA/OAR, Proposed Rule Stage, Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 2060-AV49
193. EPA/OAR, Proposed Rule Stage, Greenhouse Gas Emissions Standards for Heavy-Duty Engines and Vehicles—Phase 3, 2060-AV50
194. EPA/OAR, Proposed Rule Stage, NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review, 2060-AV53

195. EPA/OAR, Final Rule Stage, Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards, 2060-AU41
196. EPA/OAR, Final Rule Stage, Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards, 2060-AV51
197. EPA/OCSP, Proposed Rule Stage, Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels, 2070-AK91
198. EPA/OCSP, Final Rule Stage, Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA), 2070-AK86

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199. CPSC, Final Rule Stage, Regulatory Options for Table Saws, 3041-AC31
200. CPSC, Final Rule Stage, Petition for Rulemaking to Eliminate Accessible Cords on Window Covering Products, 3041-AD31
201. CPSC, Final Rule Stage, Furniture Tip Overs: Clothing Storage Units, 3041-AD65

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202. FAR, Proposed Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2017-016, Controlled Unclassified Information (CUI), 9000-AN56
203. FAR, Proposed Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2021-015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 9000-AO32
204. FAR, Proposed Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2021-017, Cyber Threat and Incident Reporting and Information Sharing, 9000-AO34
205. FAR, Final Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment, 9000-AN92
206. FAR, Final Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2020-011, Implementation of FASC Exclusion Orders, 9000-AO13

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207. FHFA, Proposed Rule Stage, Enterprise Capital Regulatory Framework Amendments, 2590-AB27

208. FHFA, Final Rule Stage, Prior Approval of Enterprise Products, 2590-AA17

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209. NRC, Proposed Rule Stage, Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC-2021-0024], 3150-AK58

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210. OPM, Final Rule Stage, Paid Parental Leave and Miscellaneous Family and Medical Leave Act, 3206-AN96
211. OPM, Final Rule Stage, Postal Service Health Benefits Program, 3206-AO43

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212. PBGC, Proposed Rule Stage, Actuarial Assumptions for Determining an Employer's Withdrawal Liability, 1212-AB54
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215. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program, 3245-AH35
216. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans, 3245-AH36
217. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility, 3245-AH37
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219. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders, 3245-AH39
220. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Non-

- discrimination and Additional Eligibility Criteria, 3245-AH40
221. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request, 3245-AH41
 222. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Increases, 3245-AH42
 223. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Eligibility of Certain Electric Cooperatives, 3245-AH43
 224. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Entities with Foreign Affiliates, 3245-AH44
 225. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Second Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting, 3245-AH45
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 227. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 3245-AH47
 228. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Eligibility of Certain Telephone Cooperatives, 3245-AH48
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 230. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to First Interim Final Rule, 3245-AH50
 231. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to the Third and Sixth Interim Final Rules, 3245-AH51
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 233. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule, 3245-AH53
 234. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Certain Eligible Payroll Costs, 3245-AH54
 235. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs, 3245-AH56
 236. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Consolidation of Interim Final Rules, 3245-AH58
 237. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 3245-AH59
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 239. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans, 3245-AH63
 240. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, 3245-AH65
 241. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Amount Calculation and Eligibility, 3245-AH67
 242. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by American Rescue Plan Act, 3245-AH77
 243. SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment, 3245-AH79
 244. SBA, Final Rule Stage, Disaster Loan Program Changes, 3245-AH80

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246. USDA/RUS, Rural Broadband Grant, Loan, and Loan Guarantee Program, 0572-AC46
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- 248. ED/OESE, Proposed Priorities, Requirements, and Definitions—Mental Health Service Professional Demonstration Grant Program, 1810-AB67
- 249. ED/OESE, Proposed Priorities, Requirements, and Definitions—School-Based Mental Health Services Grant Program, 1810-AB68
- 250. ED/OPE, Borrower Defense, 1840-AD53
- 251. ED/OPE, Pell Grants for Prison Education Programs, 1840-AD54
- 252. ED/OPE, Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10), 1840-AD55
- 253. ED/OPE, Improving Discharges for Total and Permanent Disabilities, Closed Schools, and False Certification, 1840-AD59
- 254. ED/OPE, Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control, 1840-AD69
- 255. ED/OPE, Public Service Loan Forgiveness, 1840-AD70
- 256. ED/OPE, Interest Capitalization, 1840-AD71

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- 257. HHS/FDA, Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids, 0910-AI21
- 258. HHS/FDA, Requirements for Additional Traceability Records For Certain Foods, 0910-AI44
- 259. HHS/CMS, Radiation Oncology (RO) Model (CMS-5527), 0938-AT89
- 260. HHS/CMS, Requirements Related to Surprise Billing; Part II (CMS-9908), 0938-AU62
- 261. HHS/CMS, CY 2023 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8080), 0938-AU71
- 262. HHS/CMS, CY 2023 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS-8081), 0938-AU72
- 263. HHS/CMS, Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible Beginning January 1, 2023 (CMS-8082), 0938-AU74
- 264. HHS/CMS, FY 2023 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS-1765), 0938-AU76

- 265. HHS/CMS, CY 2023 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS-1766), 0938-AU77
- 266. HHS/CMS, FY 2023 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Program (CMS-1767), 0938-AU78
- 267. HHS/CMS, CY 2023 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1768), 0938-AU79
- 268. HHS/CMS, FY 2023 Inpatient Psychiatric Facilities Prospective Payment System Rate (CMS-1769), 0938-AU80
- 269. HHS/CMS, CY 2023 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1770), 0938-AU81
- 270. HHS/CMS, CY 2023 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1772), 0938-AU82
- 271. HHS/CMS, FY 2023 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1773), 0938-AU83
- 272. HHS/CMS, Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2023 Rates (CMS-1771), 0938-AU84

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- 273. DHS/USCIS, Deferred Action for Childhood Arrivals, 1615-AC64
- 274. DHS/USCIS, Inadmissibility on Public Charge Grounds, 1615-AC74

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- 275. DOI/FWS, Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations, 1018-BF07

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- 276. DOL/ETA, Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, 1205-AC06
- 277. DOL/EBSA, Requirements Related to Surprise Billing, Part 1, 1210-AB99
- 278. DOL/EBSA, Requirements Related to Surprise Billing, Part 2, 1210-AC00
- 279. DOL/EBSA, Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, 1210-AC03

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280. STATE, Visas: Temporary Visitors for Business or Pleasure, 1400-AE95

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281. DOT/FAA, Flight Attendant Duty Period Limitations and Rest Requirements, 2120-AL41
282. DOT/NHTSA, Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21), 2127-AK95
283. DOT/NHTSA, Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication, 2127-AL55

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284. TREAS/FINCEN, Beneficial Ownership Information Reporting Requirements, 1506-AB49
285. TREAS/IRS, Requirements Related to Surprise Billing, Part 1, 1545-BQ01
286. TREAS/IRS, Requirements Related to Surprise Billing, Part 2, 1545-BQ02
287. TREAS/IRS, Requirements Related to Surprise Billing, Part 1 (Temporary Regulation), 1545-BQ04
288. TREAS/IRS, Requirements Related to Surprise Billing, Part 2 (Temporary Regulation), 1545-BQ05

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291. EPA/OAR, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters: Amendments, 2060-AU20
292. EPA/OAR, Renewable Fuel Standard (RFS) Program: RFS Annual Rules, 2060-AV11

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293. FCC, IP-Enabled Services; WC Docket No. 04-36, 3060-AI48

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294. FERC, Managing Transmission Line Ratings, 1902-AF84

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295. NRC, Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC-2020-0031], 3150-AK44

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296. OPM, Requirements Related to Surprise Billing; Part I, 3206-AO30
297. OPM, Requirements Related to Surprise Billing; Part II, 3206-AO29

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298. USDA/FSIS, Maximum Line Speed under the New Poultry Inspection System, 0583-AD85
299. USDA/FNS, Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems, 0584-AE37
300. USDA/FNS, Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP), 0584-AE71

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301. DOE/EE, Energy Conservation Standards for Clothes Dryers, 1904-AD99

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302. HHS/FDA, Medical Devices; Quality System Regulation Amendments, 0910-AH99
303. HHS/CMS, Medicare Secondary Payer and Future Medicals (CMS-6047), 0938-AT85
304. HHS/CMS, Amendments to Rules Governing Organ Procurement Organizations (CMS-3409), 0938-AU54
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306. HHS/CMS, Omnibus COVID-19 Health Care Staff Vaccination (CMS-3415), 0938-AU75

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- 307. DHS/USCIS, Temporary Non-Agricultural Employment of H-2B Nonimmigrants in the United States, 1615-AC06
- 308. DHS/USCIS, Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 1615-AC78
- 309. DHS/USCBP, Importer Security Filing and Additional Carrier Requirements, 1651-AA70
- 310. DHS/USCBP, Western Hemisphere Travel Initiative (WHTI)—Noncompliant Traveler Fee, 1651-AB06
- 311. DHS/USCBP, Collection of Biometric Data from Non-citizens upon Entry to and Exit from the United States, 1651-AB12
- 312. DHS/USCBP, Electronic System for Travel Authorization (ESTA) Operational Fee Change, 1651-AB45
- 313. DHS/FEMA, Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, 1660-AA99

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- 314. HUD/CPD, Housing Trust Fund (FR-5246), 2506-AC30

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- 315. DOI/BSEE, Revisions to Decommissioning Requirements on the OCS, 1014-AA53

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- 316. DOL/ETA, Temporary Non-Agricultural Employment of H-2B Nonimmigrants in the United States, 1205-AB76
- 317. DOL/EBSA, Improved Fee Disclosure for Welfare Plans, 1210-AB37
- 318. DOL/OSHA, COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking, 1218-AD42
- 319. DOL/WHI, High Wage Components of the Labor Value Content Requirements under the United States–Mexico–Canada Agreement Implementation Act, 1235-AA36
- 320. DOL/WHI, Modernizing the McNamara-O’Hara Service Contract Act Regulations, 1235-AA38

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- 321. DOT/NHTSA, Retroreflective Tape and Underride Guards for Single Unit Trucks, 2127-AL57

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- 322. TREAS/IRS, Prescription Drug and Health Care Spending, 1545-BQ27
- 323. TREAS/CDFIF, Interim Rule for the CDFI Bond Guarantee Program, 1559-AA01

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- 324. FCC, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12-268), 3060-AJ82
- 325. FCC, Processing Applications in the Direct Broadcast Satellite (DBS) Service; Feasibility of Reduced Orbital Spacing for Provision of DBS Service in the United States (IB Docket No. 06-160), 3060-AI86
- 326. FCC, Parts 2 and 25 to Enable GSO FSS in the 17.3–17.8 GHz Band, Modernize Rules for 17/24 GHz BSS Space Stations, and Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS (IB Doc. No. 20-330), 3060-AL28
- 327. FCC, Restoring Internet Freedom (WC Docket No. 17-108); Protecting and Promoting the Open Internet (GN Docket No. 14–28), 3060-AK21
- 328. FCC, Implementation of the National Suicide Improvement Act of 2018, 3060-AL01
- 329. FCC, Establishing a 5G Fund for Rural America; GN Docket No. 20-32, 3060-AL15

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- 330. FHFA, Enterprise Liquidity Requirements, 2590-AB09

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- 331. NRC, Revision of Fee Schedules: Fee Recovery for Fiscal Year 2024 [NRC-2022-0046], 3150-AK74

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- 332. OPM, Prescription Drug and Health Care Spending, 3206-AO27

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	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Dept. of Agriculture	20	30	24	31	46	40	47	45	80	65	84	87	93	73	67	54	52	64	39	56	47	49
Dept. of Commerce	81	85	90	90	94	109	112	103	158	115	98	90	107	112	111	108	79	74	77	89	98	88
Dept. of Defense	8	4		1	1	10	7	12	25	26	16	12	7	13	14	13	12	13	6	8	7	15
Dept. of Education	1	2	2	2		1	2	3		1	1	0	0	0	1	0	0	0	1	0	0	0
Dept. of Energy	7	14	12	15	14	8	4	5	8	6	3	2	1	1	0	0	0	1	0	1	1	0
Dept. of Health and Human Services	62	60	64	67	73	93	103	91	85	100	112	94	93	96	109	112	106	96	92	108	107	75
Dept. of Homeland Security	31	27	28	27	25	22	25	28	27	34	37	35	42	44	43	43	38	33	0	0	0	0
Dept. of Housing and Urban Development		1	1	2	2	1				0	1	0	1	5	4	4	6	11	6	3	0	1
Dept. of the Interior	18	18	13	9	30	35	30	23	24	23	18	17	18	19	29	21	20	26	17	20	18	33
Dept. of Justice	7	4	5	5	12	9	10	10	9	9	5	3	2	5	7	8	8	8	13	15	14	14
Dept. of Labor	24	31	26	12	20	22	24	22	24	23	26	29	29	26	26	19	19	23	22	26	40	38
Dept. of State	31	31	31	25	14	18	21	20	31	21	20	4	3	1	0	1	1	2	6	3	2	0
Dept. of Transportation	37	39	46	47	56	61	53	68	65	56	49	45	41	43	60	63	103	151	216	244	266	246
Dept. of the Treasury	50	36	34	36	41	23	27	29	39	47	56	48	47	45	37	41	38	27	26	27	31	15
Dept. of Veterans Affairs		2		1	1	1	1	2	1	2	3	2	2	0	0	0	0	0	1	1	3	6
Agency for International Development										1	1	0	0	1	1	0	0	1	2	1	0	0
Arch. and Trans. Barriers Compliance Board				1	2	2	1	1	1	1		0	0	0	0	0	0	0	1	1	2	2
Commodity Futures Trading Commission	1	1	2	2	2		1			0		1	1	1	0	1	1	2	0	0	0	0
Consumer Financial Protection Bureau	15	12	10	8	3	4	3	4	8	5												
Consumer Product Safety Commission	4	5	8	5	4	2			2	0			0	0	1	0	0	0	0	0	0	0
Corporation for National and Community Service										0		0	0	0	1	1	0	0	0	0	0	0
Environmental Protection Agency	7	6	3	4	14	12	6	6	49	73	95	89	83	85	95	110	122	135	167	185	205	179
Equal Employment Opportunity Commission	6	5	3	3	2	2	2	2	3	5	5	4	2	3	3	3	0	0	0	2	0	0
Federal Emergency Management Agency														0	0	0	0	0	1	1	1	0

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Federal Acquisition Regulation	59	60	53	43	38	22	24	17	15	10	5	4	6	5	5	7	5	5	6	9	13	16
Federal Communications Commission	58	69	61	77	92	99	98	99	89	78	112	110	110	109	108	113	113	104	109	117	105	91
Federal Deposit Insurance Corporation	4	4						4	5	2	1											
Federal Energy Regulatory Commission										0			0	1	0	0	0	0	0	0	0	1
Federal Housing Finance Board	2									0			0	0	0	0	0	0	0	0	0	0
Federal Maritime Commission					3	1	1	1	1	3	3	3	3	2	3	5	7	10	7	6	7	4
Federal Reserve System	2	3	4	2	2	4	7	5	12	17	8	6	5	5	3	6	5	3	7	10	8	2
Federal Trade Commission	18	16	14	18	16	18	21	18	21	22	16	16	13	11	13	12	11	9	9	9	9	10
Federal Mediation and Conciliation Service	1									0			0	0	0	0	0	0	0	1	1	0
General Services Administration	30	24	28	15	13	10	4	2	3	4	5	6	7	3	3	3	1	5	4	1	1	2
National Aeronautics and Space Administration						1	1	2	2	3			0	0	0	0	0	0	0	0	0	0
National Archives and Records Administration										0			0	0	0	1	1	1	0	0	0	0
National Credit Union Administration									2	4	4	7	3	1	4	1	2	0	0	0	0	0
National Endowment for the Arts	2	2	2	2	2	2	2	2	2				0	0	0	0	0	2	2	0	0	0
National Endowment for the Humanities										0			0	0	0	0	0	0	0	0	0	0
National Labor Relations Board		2	1																			
Nuclear Regulatory Commission	3	3	3	3	3	3	4	3	6	3	1	2	1	2	1	1	0	3	5	5	3	5
Office of Management and Budget	2	2	1							0			0	0	0	0	0	0	0	0	1	2

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Pension Benefit Guaranty Corporation					1																	
Railroad Retirement Board									0				0	0	0	0	0	0	0	0	0	0
Resolution Trust Corporation															0	17	0	0	0	0	0	0
Small Business Administration	12	11	15	17	19	28	23	27	38	35	39	20	13	15	21	19	18	24	21	21	24	28
Social Security Administration										1		1	1	1	1	1	1	1	1	0	0	2
Surface Transportation Board	1	1	1	1	2		1															
Securities and Exchange Commission	30	34	20	19	24	11	9	15	19	27	21	21	19	29	16	0	20	25	28	26	40	39
TOTAL	634	644	605	590	671	674	674	669	854	822	845	758	753	757	787	788	789	859	892	996	1054	963

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," Federal Register, various years' editions, www.reginfo.gov.

Part I. The Unconstitutionality Index, 1993–2022

Year	Final Rules	Public Laws	The Index	Notices	Executive Orders	Executive Memos
1993	4,369	210	21			
1994	4,867	255	19			
1995	4,713	88	54	23,175	40	
1996	4,937	245	20	24,413	50	
1997	4,584	153	30	26,059	38	
1998	4,899	241	20	26,211	38	
1999	4,684	170	28	25,516	35	
2000	4,313	410	11	25,462	39	13
2001	4,132	108	38	24,824	67	12
2002	4,167	269	15	25,736	32	10
2003	4,148	198	21	25,418	41	14
2004	4,101	300	14	25,310	46	21
2005	3,943	161	24	25,351	27	23
2006	3,718	308	12	25,026	26	18
2007	3,595	188	19	24,559	33	16
2008	3,830	285	13	25,273	30	15
2009	3,503	125	28	24,868	44	38
2010	3,573	221	16	26,173	43	42
2011	3,807	118	32	26,161	34	19
2012	3,708	157	24	24,377	39	32
2013	3,659	117	31	24,261	24	32
2014	3,554	224	16	23,970	34	25
2015	3,410	115	30	23,959	29	31
2016	3,853	213	18	24,557	44	36
2017	3,281	98	33	22,137	63	35
2018	3,368	313	11	22,025	35	29
2019	2,964	137	22	21,804	47	24
2020	3,038	177	17	22,480	67	49
2021	4,429	143	31	21,985	93	30
2022	3,168	247	13	22,505	29	46

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